MANITOBA POLICE COMMISSION

GRENADA DEMONSTRATION INQUIRY REPORT

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MANITOBA
DEPARTMENT OF THE ATTORNEY-GENERAL

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March 29, 1985.

TO: HER HONOUR,
THE LIEUTENANT GOVERNOR IN COUNCIL OF MANITOBA

MAY IT PLEASE YOUR HONOUR

We, Jeffrey James Oliphant, Catherine Louise Hiller and Kenneth Hanly, members of the Manitoba Police Commission which has, by Order-in-Council No. 1214 been directed to inquire into all of the events and circumstances surrounding the demonstration by the members of the public outside the United States of America Consulate Office in Winnipeg, on Friday, October 28th, 1983 and report:

Beg to submit to Your Honour

Our Report

Chairman

Ken Hanly
Member

Catherine Hiller
Member

Working Together To Prevent Crime

INDEX

PAGE

1 Introduction and Parties

2 Procedural Rulings

4 Onus of Proof and Standard of Proof

5 The Demonstration

7 Questions Which the Commission has Addressed

11 Findings

70 Summary of Recommendations

74 **Schedule "A"** - List of Witnesses

75 **Schedule "B"** - List of Exhibits

77 **Schedule "C"** - Decision of the Manitoba Police Commission dated March 12, 1984.

88 **Schedule "D"** - Decision of the Manitoba Police Commission dated July 6, 1984.

102 **Schedule "E"** - Summary of the Evidence

- 102 - Organization of the Demonstration
- 106 - Organization by the Police
- 107 - Organization of the Counter-demonstration
- 113 - Arrival of the Counter-demonstrators and Events on the Steps
- 138 - The Arrest on the South Side of the Steps
- 142 - The Arrest on the North Side of the Building
- 157 - Incidents Around Cruiser Car 1612
- 195 - Three Incidents Involving a Demonstrator in a Purple Shirt
- 222 - A Second Arrest Behind Cruiser Car 1612
- 224 - Events on the North Side of Cruiser Car 1662
- 248 - The Incident on the Median of Donald Street
- 262 - The Arrests which took place at District 6 Police Station

267 **Schedule "F"** - Blowups of Photographs 1 and 2 of Exhibit 21

This inquiry was conducted by the Manitoba Police Commission by virtue of Order-in-Council 1214 dated November 9th, 1983 in which the Commission was ordered:

> To investigate and inquire into all the events and circumstances surrounding the demonstration by the members of the public outside the United States of America Consulate office in Winnipeg on Friday, October 28th, 1983, and for the purpose of the investigation and inquiry, to hold such hearings as it considers necessary, and without restricting the generality of the foregoing to obtain answers to the following questions..."

On two separate occasions namely, January 27th, 1984 and March 15th, 1984 the Commission sat for the purpose of determining who would be given status as parties to the Inquiry. At these hearings the following parties were given status to participate.

1. The Winnipeg Police Association.
2. The Winnipeg Senior Officers Association.
3. The City of Winnipeg.
4. Paula Elizabeth Fletcher, Walter Roy Kirby, Gabriel Robinson Daza, Jorge Enrique Alvarez, Campos Gundher Ortiz.
5. Paul Graham and Patrick Barnholden, in their own capacity and on behalf of all organizers of the demonstration and on behalf of those demonstrators who were present and were members of the October 28th defence committee.
6. The Chilean-Canadian Cultural Centre Inc.

Counsel for the parties who participated in the Inquiry were:

1. Alvin R. McGregor, Q.C. and Tana Christianson for the Winnipeg Police Association.

2. Mel Myers, Q.C. for the Winnipeg Senior Officers Association.

3. R. J. Scott, Q.C. and Doug Abra for the City of Winnipeg.

4. Fagie Fainman for Fletcher et al, and Graham and Barnholden.

5. David Deutscher for the Chilean-Canadian Cultural Centre Inc.

6. Perry W. Schulman, Q.C. for the Manitoba Police Commission.

The Inquiry sat and heard evidence on 27 days. The days were May 14th to 18th, both inclusive, May 28th to June 1st, both inclusive, June 18th to 22nd, both inclusive, July 30th to August 3rd, both inclusive, August 13th to 17th, inclusive, and October 22 and October 23, 1984.

Twenty witnesses appeared before the Commission during the course of the Inquiry. Names of these witnesses are set out in Schedule "A". Thirty-seven exhibits were filed during the course of the Inquiry and a list of them is set out in Schedule "B". One of the exhibits is comprised of CKY videotapes of the event. There were three such tapes, approximately 5 minutes, 18 minutes and seven minutes of recorded events respectively. Another of the exhibits was comprised of two CKND-TV videotapes, 15 minutes and 7½ minutes of action respectively. Nine exhibits are comprised of 273 photographs taken at the scene.

This Commission has been called upon to make two important procedural rulings. Seven persons were charged with various offences under the Criminal Code as a result of events which took place on October 28th, 1983 at the U.S. Consulate. At the January 27th, 1984 pre-inquiry hearing of this Commission, Mel Myers, Q.C., Counsel for the Winnipeg Senior Officers Association observed that, in his view, it was inappropriate for the Manitoba Police Commission to proceed with the Inquiry until such time as criminal charges, which had apparently been laid, are disposed of. On March 15th, 1984 the Commission delivered the unanimous decision which was marked as Exhibit 5 and is set forth as Schedule "C" to this Report. The ruling was "it is therefore my ruling that this Inquiry...shall proceed even though there has been no disposition of the criminal charges against the accused persons." The trial date of the charges had originally been set for February 1984 and the charges have been adjourned from time to time pending completion of this Inquiry and Report.

The second important matter on which this Commission was required to rule was raised by A. R. McGregor, Q.C., Counsel for the Winnipeg Police Association who asked the Commission to rule whether or not in its Report and recommendation, it intended to identify by name individuals responsible for criminal activity if the evidence indicated that criminal acts were committed during the course of the demonstration. On July 6, 1984 this Commission delivered a unanimous ruling which is Exhibit 27 to this Inquiry and Schedule "D" to this Report, "that this Commission should not, in its Report, ascribe civil or criminal responsibility to any individual or individuals." And that, "nothing would be gained by the naming of names when this Commission makes its Report to the Attorney-General."

A public misconception has arisen as to the purpose of this Inquiry. The misconception arises as a result of media reports to the effect that this is an Inquiry into allegations of police brutality.

While we are of course concerned with conduct of the police, the scope of the Inquiry is much broader than that. It includes an investigation of all events which occurred at the U.S. Consulate on October 28th, 1983. As such we look at the conduct or misconduct, as the case may be of not only police officers, but also of demonstrators and counter-demonstrators.

The accounts given by many of the witnesses were seriously in conflict with the evidence of other witnesses who testified on the same points. Despite the views of some people, this Commission does not view this Inquiry as an adversarial proceeding, but rather a fact finding mission. We are interested in searching for the truth. Because we do not view this as an adversarial proceeding, we do not find it necessary to decide upon whom the onus of proof of any fact lies. However, it is important for us to determine what standard of proof is applicable in the fact finding process.

In an Inquiry by this Commission conducted pursuant to Order-in-Council No. 28, dated January 11th, 1978 known as the Frampton Inquiry, this Commission was directed "to inquire into and report upon the alleged mistreatment of the said John Francis Frampton by the police department of the City of Winnipeg during the period of his arrest and detention on or about 18 and 19 July, 1976." In the Report published subsequent to that Inquiry this Commission stated,

> "Having regard to the seriousness of the allegations which were made by John Francis Frampton, and the possible consequences to persons who are affected by his allegations, we have decided that in making our findings we will not make a finding of fact unless we are satisfied that the fact has been proved beyond a reasonable doubt. By

> that we mean we will not hold anything to be true unless we are convinced of its veracity beyond a moral certainty."

We distinguish the Frampton Inquiry on the ground that whereas in that Inquiry there were specific allegations of mistreatment at the hands of members of the Winnipeg Police Department, no such specific allegations exist here. This Inquiry is much more general in nature than the Frampton Inquiry. Moreover as stated in Schedule "D" we have determined that we will not ascribe criminal or civil liability, nor will we name individuals who may have committed criminal offences or tortuous acts. The standard of proof which we therefore intend to apply is that of the balance of probabilities as opposed to proof beyond a reasonable doubt.

On October 25th, 1983 events occurred in the island of Grenada which triggered a series of demonstrations across Canada. One of those demonstrations took place on October 28th, 1983 at the United States Consulate on Donald Street in the City of Winnipeg. The demonstration which commenced at approximately 5 p.m., while noisy, was peaceful. During the peaceful portion of the demonstration all persons participating voiced their opposition to what they described as an invasion of Grenada by United States Armed Forces. About 15 minutes after the commencement of the demonstration, while about 450 participants were demonstrating in front of and on the steps in front of the U.S.

Consulate, 6 counter-demonstrators arrived carrying a selection of signs and banners. Some of these individuals were dressed in military style garb. It was later discovered that all were members of the Royal Winnipeg Rifles. The actions of some of these 6 individuals precipitated a series of events which took place over the next 45 minutes, more or less, all of which will be dealt with in greater detail later in this Report. These events involve certain of the demonstrators, certain of the 6 counter-demonstrators and certain members of the Winnipeg Police Department. Following termination of the demonstration at the United States Consulate, some of the demonstrators attended at the Public Safety Building in Winnipeg and some attended at District 6 Police station on Pembina Highway. Initially, 4 police officers were on duty at the United States Consulate, with 2 standing by in a cruiser car in the immediate vicinity of the building. That number rose to about 30 before activities subsided.

We have reviewed the evidence which was adduced at the Inquiry. Our summary of the evidence is set out in Schedule "E" commencing at page 102 of this Report.

QUESTIONS WHICH THE COMMISSION HAS ADDRESSED

The Order-in-Council directs us to "investigate and inquire into all the events and circumstances surrounding the demonstration by the members of the public outside the United States of America Consulate office in Winnipeg on Friday, October 28th, 1983...and without restricting the generality of the foregoing to obtain answers to the following questions:

(a) What instruction and training is given to members of the Winnipeg Police Department with respect to crowd and riot control in the event of a disturbance or disruption at a demonstration or meeting?

(b) Does the Winnipeg Police Department have a specially trained force for crowd and riot control and if so, were any of these specially trained officers in attendance?

(c) What was the rank of police officers in attendance and, in particular, was there any officer of a senior rank in control of the police operation at any time?

(d) What event or events led to the disturbance and in the particular circumstances what, if anything, might have been done to minimize the extent of the disruption?

(e) What guidelines would the Commission recommend to avoid or minimize occurrences of this kind in the future including the responsibilities of those members of the public organizing public demonstrations?"

In the context of the factual situation we have addressed the following questions:

1. What instruction and training is given to members of the Winnipeg Police Department with respect to crowd and riot control in the event of a disturbance or disruption at a demonstration or meeting?

2. Does the Winnipeg Police Department have a specially trained

force for crowd and riot control and if so, were any of those specially trained officers in attendance?

3. What was the rank of police officers in attendance and, in particular, was there any officer of a senior rank in control of the police operation at any time?

4. As a result of the training or lack thereof of the police officers, were they properly and adequately prepared for what ultimately transpired at the demonstration?

5. What was the background and experience of the police officers who attended the demonstration?

6. To what extent was the demonstration organized?

7. What was the background and experience of the organizers of the demonstration and of the marshals?

8. Were the organizers and marshals prepared for the events as they transpired?

9. Was any leadership demonstrated by the organizers of the demonstration once things began to escalate?

10. What event or events led to the disturbance?

11. To what extent, if any, should the counter-demonstrators share responsibility for the melee which erupted?

12. Was the reaction of the organizers, the marshals and the demonstrators in response to the arrival of the militiamen, reasonable?

13. Was the reaction by members of the Winnipeg Police Department to the arrival and involvement of the counter-demonstrators, appropriate?

14. Was the arrest on the south side of the steps reasonable in the circumstances?

15. Was the intervention by demonstrators reasonable in the circumstances?

16. Was the arrest on the north side of the building reasonable in the circumstances?

17. Was the conduct of the demonstrators following the arrest on the north side of the building reasonable?

18. Did organizers of the demonstration lose control and did leadership of the demonstration shift to others?

19. Were the actions of the police officer who placed the prisoner in cruiser car 1612 reasonable?

20. Was the decision by the police to remove the prisoner from the scene in cruiser car 1612 reasonable?

21. Was the conduct of the member of the Winnipeg Police Department who was depicted on the videotapes at the front of cruiser car 1612 with a defender baton reasonable?

22. Was the conduct of members in removing demonstrators from the rear of cruiser car #1612 reasonable?

23. Was the conduct of members of the Winnipeg Police Department involved on the north side of cruiser car #1662 reasonable?

24. Was the conduct of the member of the Winnipeg Police Department on the median of Donald Street who removed the demonstrator from blocking the path of cruiser car #1612 reasonable?

25. Was the conduct of the demonstrator who allegedly struck an officer and kicked another officer reasonable?

26. Was the conduct of the demonstrator in possession of a bicycle reasonable?

27. What was the role of the Marshal who was arrested at District 6 Police Station?

28. Were the arrests which were made at District 6 Police Station reasonable?

29. Should children be present at and participate in demonstrations in light of what transpired here?

30. Did the presence of the media affect in any way whatsoever the conduct of the demonstrators, the counter-demonstrators or the police?

31. Was there reasonable communication amongst the police officers and was there reasonable communication between the police officers and leaders of the demonstration?

32. What findings can be made about the Chilean experience?

33. What recommendations does this Commission make as a result of this Inquiry?

FINDINGS

We now proceed to answer the questions which we have posed. In the answers to questions 1, 2, 3, 6, 7, 8, 9, 12, 15, 17, 18, 23, 24, 25, 29, 30 and 33 this Commission is unanimous. In the answers to questions 4, 5, 10, 11, 13, 14, 16, 19, 20, 21, 22, 26, 27, 28, 31 and 32 the Commission is divided. The majority view is that of the Chairman and of Ms. Hiller. The minority view is that of Professor Hanly.

1. WHAT INSTRUCTION AND TRAINING IS GIVEN TO MEMBERS OF THE WINNIPEG POLICE DEPARTMENT WITH RESPECT TO CROWD AND RIOT CONTROL IN THE EVENT OF A DISTURBANCE OR DISRUPTION AT THE DEMONSTRATION OR MEETING?

Evidence on this issue came before the Commission by way of the Report of Dr. Raymond Perry (Exhibit No. 36). This Report was commissioned at the request of counsel for the Winnipeg Police Department and by counsel for the Manitoba Police Commission. In his Report, while admitting that the estimate may be conservative, Dr. Perry makes the point that instruction on the psychology of crowds, that is crowd management, amounts to only 2.5% of a course on interpersonal dynamics which takes approximately 90 hours.

The Report states (at page 8):-

> "Although the time devoted to crowd control (civil disturbances) may be low (2.5%), it should be recognized that the course involves basic training of new recruits for normal police duties. It would appear that crowd control activities are not considered to play an essential role in normal police functioning."

Dr. Perry goes on to state that the Winnipeg Police Department also offers a course to Commanders who may be responsible for directing the crowd control formation at public events. This course involves a 1 week period consisting of 40 hours during which a variety of topics are covered. Four hours of that week are devoted to the psychology of crowds, the major portion of the course consisting of tactics and logistics.

2. DOES THE WINNIPEG POLICE DEPARTMENT HAVE A SPECIALLY TRAINED FORCE FOR CROWD AND RIOT CONTROL AND IF SO, WERE ANY OF THOSE SPECIALLY TRAINED OFFICERS IN ATTENDANCE?

Reference to the Winnipeg Police Department crowd control unit is to be found in the Report of Dr. Raymond Perry (Exhibit No. 36). In addition, we had the benefit of a letter to counsel for the Commission from Sergeant G. Sandell who is the officer in charge of the Winnipeg Police Department's crowd control unit.

In their submission, counsel for the Winnipeg Police Association state (tab 8, page 4):-

> "Reference is made to the Crowd Control Unit of the Winnipeg City Police Department. Once again, we can accept that there should be an increased emphasis on the psychology of crowds and crowd management. At the same time, we must stress that the Crowd Control Unit is basically what might be referred to as an 'offensive' Unit, who would be prepared to take direct physical action against a crowd. Police officers not acting as part of the C rowd Control Unit act in a more 'defensive' mode and this is basically the actions that were attempted to be effected by the officers present on October 28, 1983."

The evidence discloses that while the City of Winnipeg does have a specially trained force for crowd and riot control, the call out procedure for the unit requires at minimum 1 hour and realistically longer to be fully ready to move on any unlawful assembly. (Exhibit No. 37)

The response time of the Winnipeg Police Department's Crowd Control Unit was also referred to in the evidence of at least one of the two senior police officers in attendance at the U.S. Consulate on October 28, 1983. His evidence indicates that the response time of the Winnipeg Police Department's Crowd Control Unit is something between three and four hours.

When Sergeant Sandell's report, referring to the Winnipeg Police Department's Crowd Control Unit, talks about being ready to move on any unlawful assembly, we gather that this unit is not utilized unless and until a crowd or at least certain members of a crowd, has committed an act or series of acts deemed to be illegal.

The same conclusion is to be drawn from the submission of counsel for the Winnipeg Police Association who describe the Crowd Control Unit as an "offensive unit" prepared to take direct physical action against a crowd.

It is important to note the distinction between crowd management and crowd control. Once tactics of crowd management have failed, crowd control takes over. If through the utilization of well-known crowd management tactics members of the police department are successful in managing a crowd, then control of that crowd is not necessary. Obviously, when the crowd control unit is called out, the crowd has become unmanageable.

While there were members of the Winnipeg Police Department's Crowd Control Unit present at the U.S. Consulate on October 28, 1983, they were not there in the capacity of members of the Unit but rather in the normal course of their duties as members of the Winnipeg Police

Department.

We pause here to note that in terms of complaints of excessive use of force by members of the Winnipeg Police Department at the U.S. Consulate and in terms of the evidence that the Commission heard with respect to those complaints, the cases where excessive force was, in our opinion used, were, almost without exception, at the hands of either members or ex-members of the Crowd Control Unit of the Winnipeg Police Department.

3. WHAT WAS THE RANK OF THE POLICE OFFICERS IN ATTENDANCE AND, IN PARTICULAR, WAS THERE ANY OFFICER OF A SENIOR RANK IN CONTROL OF THE POLICE OPERATION AT ANY TIME?

Initially there were six members of the Winnipeg Police Department in attendance at the U.S. Consulate on October 28, 1983. There were two Sergeants, William Earl Nicholson who is a Sergeant I with 19½ years experience and Sergeant Bruce Robert Vokey who is a Sergeant II with 10 years of service. The other members in attendance were Constables with varying degrees of experience and service with the Department.

As matters progressed, more members of the Winnipeg Police Department arrived. Ultimately, Inspector Wayne King arrived but by the time of his arrival, things had pretty well calmed down.

Sergeant Nicholson was the ranking officer in charge from the outset of the demonstration. He was in contact with the dispatcher who was advised by Sergeant Nicholson to tell Inspector King what was going on. Sergeant Nicholson anticipated the attendance of Inspector King. It should also be noted in terms of Inspector King's arrival time that he was involved in a major investigation involving a homicide prior to attending at the U.S. Consulate.

While Sergeant Nicholson did not follow the requirements of the Winnipeg Police Department Manual in terms of contacting the senior officer, we find no fault on his part in failing so to do bearing in mind the circumstances under which he was attempting to perform his duties at the time.

It is questionable as to whether or not the attendance of even the Chief of the Winnipeg Police Department that day would have made any difference to the crowd.

4. AS A RESULT OF THE TRAINING OR LACK THEREOF OF THE POLICE OFFICERS, WERE THEY PROPERLY AND ADEQUATELY PREPARED FOR WHAT ULTIMATELY TRANSPIRED AT THE DEMONSTRATION?

MAJORITY VIEW

Firstly, we point out that no one could have possibly foreseen, prior to the demonstration, the events which occurred during the course of the demonstration. Police officers who were present at the U.S. Consulate on October 28, 1983 had experience in dealing with other demonstrations, with strike situations and other crowd situations none of which ever amounted to anything close to the incidents that occurred at the U.S. Consulate. There were several demonstrators who testified that they too had been present at prior demonstrations all of which were unremarkable in the context of the occurrences of October 28, 1983.

Having said that, however, a police department, responsible for the protection of life and property of citizens of the community, must, in our view, be prepared for the unforeseen; and for this adequate training is required.

A nagging question arises, however, and that is even assuming that the officers present had had the benefit of the best training available in crowd management, would it have made any difference under the circumstances?

Would the best training available have resulted in members of the Winnipeg Police Department discouraging the intervention by the counter-demonstrators in the manner in which it occurred? Presumably, and this of course is sheer speculation, had there been no intervention at the hands of the counter-demonstrators, the demonstration which had begun as a peaceful demonstration would have remained so on the day in question.

If the members of the Winnipeg Police Department present were to have had the benefit of the best training available, would they have been able to foresee the type of reaction that would arise when the demonstration was seriously disrupted.

These questions are difficult and any answers thereto would be speculative.

One thing is clear, however, and that is that members of the Winnipeg Police Department should be better trained in techniques of crowd management and have a better understanding of crowd psychology. The Winnipeg Police Department was aware that there was going to be a demonstration but based on the information given to it, the Department believed that there would be around 100 people present. Ultimately 400 to 500 people attended the demonstration. Because there are no requirements placed on demonstrators or counter-demonstrators, the

Police Department had no way of knowing that there was going to be a counter-demonstration.

Based on all of the evidence that the Commission has heard and viewed, a majority of this Commission is of the opinion that while more and better training is advisable, the events which occurred on October 28, 1983 at the United States Consulate cannot be blamed on a lack of training of the police officers in attendance.

MINORITY VIEW

A minority of this Commission is of the view that lack of training was a contributing cause to some of the events. The police were not as aware of the feelings of the crowd as were the organizers, some of the marshals and the media. Had they been so aware I feel sure that they would have taken the counter-demonstrators off the steps immediately. As it was, the delay, short though it was, aroused the hostility of the crowd to the police.

5. WHAT WAS THE BACKGROUND AND EXPERIENCE OF THE POLICE OFFICERS WHO ATTENDED THE DEMONSTRATION?

MAJORITY VIEW

Initially there were six members of the Winnipeg Police Department in attendance. Based on the information available to the Department it was felt that this number would be sufficient. There were two Sergeants, Sergeant Nicholson and Sergeant Vokey and four Constables. Two of the four Constables were assigned to a car which was located in the area but not right at the U.S. Consulate. As events unfolded, those two Constables were called to the Consulate.

As has already been indicated in this report Sergeant

Nicholson had 19½ years of experience while Sergeant Vokey had 10 years of experience. Both of these men had prior experience with crowd situations, some of which were in labour disputes and one of which was a series of demonstrations that had been held at the Morgentaler Clinic.

No members or ex-members of the Winnipeg Police Department's Crowd Control Unit were in attendance initially. They arrived later as a result of a call or calls for assistance from Sergeant Nicholson.

The other members of the Winnipeg Police Department who were in attendance were Constables with varying years and degrees of experience.

There were, during the course of the Inquiry, allegations made on several occasions that the police showed "an anti-demonstrator bias." A majority of this Commission finds that the evidence does not support this allegation. To the contrary, if anything, the evidence before the Commission discloses a bias on the part of the demonstrators towards the police. The attitude of demonstrators towards the police has been described by counsel for the Winnipeg Police Association as a "paranoia." We are not sure that we can agree with that description but whether it arises from the political backgrounds of the demonstrators, their political leanings or other experiences with the police, there is definitely an attitude that the police are the enemy. One need only point to evidence that we heard from the demonstrator with the bicycle about his views of the Commission's Investigator who did have an R.C.M.P. background to substantiate this finding. Another person who addressed the Commission but was not called as a witness was Regina Bueno who implied that after she was visited by Mr. Hanson, weird things began to happen to her. She believes that Mr. Hanson's visit to her triggered the visit by the R.C.M.P. to the parents of her babysitter. She said that funny books or magazines were found in her house after the visit of Mr. Hanson. These are simply examples of what we mean when we talk about the attitude of demonstrators towards the police.

MINORITY VIEW

The minority view is that the demonstrators felt the police were biased only after observing the reaction of police officers to the arrival of the counter-demonstrators. The perception of bias grew with the attempt to make an arrest on the south side of the steps and with the arrest on the north side of the building. It is hardly paranoid for the crowd to feel those who might be out to disrupt the demonstration seemed to be able to call upon the police for aid, whereas attempts by the crowd to protect themselves were somehow violations of the law. Given the immediate actions of the police it is not prima facie irrational let alone paranoid for the crowd to sense a bias.

The minority view is further that the police were insensitive and imprudent rather than biased. In subsequent events some of them lost their cool in a hostile and frightened reaction to the crowd's hostility to their acts.

6. TO WHAT EXTENT WAS THE DEMONSTRATION ORGANIZED?

There was little organization on the part of the organizers. The organization was so loose that witnesses were unable to recall the names or number of all of the marshals. Further, leadership was so loose that when trouble developed leadership passed from the organizers to others.

7. WHAT WAS THE BACKGROUND AND EXPERIENCE OF THE ORGANIZERS OF THE DEMONSTRATION AND OF THE MARSHALS?

Two of the marshals were highly experienced in matters relating to the carrying out of demonstrations. One attends about ten demonstrations each year. The other has taken part in about forty. The unexpected intervention of the counter-demonstrators, however, took the matter beyond the experience of any of the organizers and marshals.

8. WERE THE ORGANIZERS AND MARSHALS PREPARED FOR THE EVENTS AS THEY TRANSPIRED?

The organizers and marshals were not prepared for the events as they transpired.

9. WAS ANY LEADERSHIP DEMONSTRATED BY THE ORGANIZERS OF THE DEMONSTRATION ONCE THINGS BEGAN TO ESCALATE?

The organizers of the demonstration were Susan White and Dennis King. King acted as a representative of the Canada Grenada Friendship Society. Susan White, acted as a representative of Oxfam. We find that after the intervention of the counter-demonstrators no leadership whatsoever was provided by either of the organizers.

Susan White felt that her best course of action was to continue with the program which she did; in this way she hoped to keep people from drifting off to participate in events near Bell Avenue. This was obviously an unwise decision and did not have the effect of cooling down events. More importantly it meant that she was not where the action was so to speak and did not provide any leadership in helping to resolve the confrontations which occurred. One can only conclude that she failed to take on responsibilities, which as one of the key organizers, were her duty.

10. WHAT EVENT OR EVENTS LED TO THE DISTURBANCE?

MAJORITY VIEW

This Commission believes that the responsibility for what transpired must be shared by all segments present at the demonstration. The sharing of that responsibility must not however, by necessity be equal.

Quite likely the demonstration which started out quite peacefully would have remained that way were it not for the actions of the counter-demonstrators.

A majority of this Commission is of the view that the actions of the demonstrators following the arrest on the south side of the steps were inexcusable. A lot of what happened subsequent to that can be attributed to the fact that the individuals involved in the incident truly believed that they could act with impunity towards the police. To that extent the incident contributed significantly to the events which followed.

The arrest on the north side of the building gave to some of the leaders of the demonstration the excuse that they needed to agitate and excite the crowd for their own purpose. In the events which followed, some of the actions of the demonstrators were unreasonable and, unfortunately, prompted unreasonable reaction on the part of some of the police officers.

These factors taken with two additional factors put the entire situation into context. These two factors are firstly, that events occurred which were both unexpected and unforeseen; secondly, to a tremendous degree the demonstrators outweighed in number counter-demonstrators and more significantly the police officers.

MINORITY VIEW

The minority view is that although the actions of demonstrators in the incident on the south side of the steps may have contributed to some extent to a feeling on the part of some demonstrators that they could act with impunity towards the police, this must be balanced by the fact that the arrest on the north side of the building afterward was not accompanied by a concerted action to free him during the course of his travel to the police car; however it may have led to the throwing of leaves and the individual aggression against some officers. As well, given the circumstances it would have been wiser for Sergeant Vokey to concentrate upon getting the counter-demonstrator safely out of the area. Allowing infractions of the law which caused no serious harm seems preferable to taking action that may raise the hostility of a crowd and lead to future problems. The person assaulted, in his testimony, was of the view that Sergeant Vokey made a tactical error at this time. The minority view shares this opinion. Although as the Commission's Investigator comments the attempted arrest was technically correct I do not believe it was the most reasonable course of action.

The minority view is that the implications in the sentence "the arrest on the north side of the building gave to some of the leaders of the demonstration the excuse that they needed to agitate and excite the crowd for their own purpose" are unacceptable. The purpose of the leaders was to find out why the person was arrested and to attempt to have him released if possible. There is no evidence that this was something foisted upon the crowd. This was an aim widely shared by those present; nor was the agitation and excitement of the crowd something which the leader somehow manufactured. It was a more or less spontaneous reaction to the events which were taking place. The use of the term "excuse" suggests that the leaders were in effect doing something wrong which needs some justification. Mobilizing people so as to obtain more power in achieving these particular ends does not seem to me to be the type of thing that requires an excuse.

11. TO WHAT EXTENT, IF ANY, SHOULD THE COUNTER-DEMONSTRATORS SHARE RESPONSIBILITY FOR THE MELEE WHICH ERUPTED?

MAJORITY VIEW

The majority of this Commission has no doubt that the intervention of the counter-demonstrators was the basic cause of all of the trouble which arose at the U.S. Consulate on October 28, 1983. As we have already noted, the demonstration would probably remained as peaceful as it was when it commenced if the counter-demonstrators had not arrived and intervened in the manner in which they did. Their conduct was calculated and planned and each of the counter-demonstrators who attended should be truly ashamed of his actions. At least two of the counter-demonstrators apologized for their actions when they testified before the Commission. The attitude of the third counter-demonstrator who testified can only be described as flippant and his thinking as shallow.

It frightens us to think that in a time of need the people of Canada may have to rely upon men such as these.

MINORITY VIEW

I agree that the intervention of the counter-demonstrators was the basic cause of all of the trouble which arose at the United States Consulate on October 28, 1983. I wish to add the following comments.

The counter-demonstrators by taking the steps changed a peaceful crowd into a hostile and emotionally aroused crowd. Although the counter-demonstrators have a right to counter demonstrate this was not exercised in a responsible way but in a provocative and disruptive manner which might very well have caused a tumultuous riot. This sense of hostility once aroused was consequently directed to the police when their actions were perceived as threats to members of the demonstration. If these feelings had not been aroused the emotionally charged atmosphere which was in large part a factor in subsequent actions by the demonstrators would not have existed. Before the disruption by the demonstrators I find no evidence of any feelings against the police.

12. WAS THE REACTION OF THE ORGANIZERS, THE MARSHALS AND THE DEMONSTRATORS IN RESPONSE TO THE ARRIVAL OF THE MILITIAMEN REASONABLE?

The reaction of the organizers to the arrival of the counter-demonstrators was to object to their presence. White's attitude was that no one other than the organizers had the right to be on the platform. In her view she had received what was tantamount to permission to use the steps, from the police officer in charge. While White expressed that view, there is evidence that she tolerated the presence of people who were not organizers on the platform. While she may reasonably have considered that the organizers had the right to be on the platform, she had no basis for assuming that the organizers had the exclusive and inalienable right to be on the platform.

The reaction of the head marshal was not noteworthy. The reaction of another marshal, although not identifiable as such, was to organize a human chain, the purpose of which is a matter of conflicting evidence. The demonstrators were, at the time, carrying out a lawful demonstration in an attempt to convey their views to others. The freedom to express oneself is enshrined in the Canadian Charter of Rights and Freedoms. While the demonstrators had no lawful right to block the steps of the Consulate to impede others from gaining access to the platform we find in the circumstances that their conduct was reasonable. We are not able to find that the human chain was formed for the purpose of blocking the media's access to the platform.

The reaction by certain demonstrators was entirely unjustified. For example, one demonstrator struck the face of a counter-demonstrator who was about to go up the stairs. Counter-demonstrators were stripped of their signs, some of which were destroyed by demonstrators. While we do not commend the conduct of demonstrators who tore signs away from the counter-demonstrators, it is not difficult to understand that conduct and such conduct highlights the necessity in the future for keeping a distance between demonstrators and counter-demonstrators.

13. WAS THE REACTION BY MEMBERS OF THE WINNIPEG POLICE DEPARTMENT TO THE ARRIVAL AND INVOLVEMENT OF THE COUNTER-DEMONSTRATORS APPROPRIATE?

MAJORITY VIEW

As noted in our summary of the evidence, Balagus says that he was standing near Vokey when he (Balagus) saw the counter-demonstrators arrive and recognized that there was going to be trouble. Balagus was of the view that his caution to his camera person must have been heard by Vokey. Balagus was critical of Vokey for failing to take action to prevent the counter-demonstrators from going up the steps.

Vokey said that he assumed that the counter-demonstrators were merely demonstrators joining the crowd. From their dress he had no reason to expect any problem. Vokey said that he did not hear Balagus' words of recognition that trouble was coming.

We made a careful study of the videotapes in order to see whether or not confirmation can be made of Balagus' evidence that Vokey was standing near him when the militiamen arrived. We were unable to find confirmation on the videotapes. When Vokey realized that there was a problem on the platform in front of the Consulate he endeavored to go up the steps, and when he got there he led two counter-demonstrators down the south side of the steps.

From Rand's interview with the Commission's Investigator, we infer that he did not seem terribly interested in the events on the steps. The evidence establishes however that Rand intervened between a counter-demonstrator and a demonstrator, taking the counter-demonstrator away from the action to the back of the platform.

There is 21 seconds of unbroken tape from the time that the first counter-demonstrator reached the top of the steps until Rand took hold of him, in the view of a majority of this Commission, a timely reaction to the events which unfolded before Rand.

Implicit in Balagus' position is that the police officers ought to have recognized that there would be trouble caused by the counter-demonstrators, and that the police officers should have arrested the counter-demonstrators before they reached the steps. Balagus took the matter one step further. He did not know whether or not the actions of the counter-demonstrators were illegal, but whether illegal or not he felt that police officers should have used their powers of persuasion to dissuade counter-demonstrators from going up the steps. As to the counter-demonstrators' actions, Vokey felt that they did nothing wrong. Nor did Rand. We, after a careful review of all of the evidence, including the evidence of the counter-demonstrators themselves, have reached a different conclusion than the police officers, but we cannot find that the reaction of the police officers at the time was inappropriate.

MINORITY VIEW

The minority view is that the reaction of the police was inappropriate. Although the delay in reacting was short, the delay was significant if not crucial in changing the perception of the crowd to the police. In the circumstances the police should have removed the counter-demonstrators immediately because the counter-demonstrators were disrupting the demonstration and interfering with the demonstrators' right of freedom of speech. They were also producing a situation which might lead to a riot.

14. WAS THE ARREST ON THE SOUTH SIDE OF THE STEPS REASONABLE IN THE CIRCUMSTANCES?

MAJORITY VIEW

The officer saw what he believed to be an assault (a summary conviction offence) committed. It occurred in circumstances in which the event could well recur, either at the hands of the perpetrator of the assault or others. There is ample justification for the effecting of an arrest within the framework of Section 450(2) of the Criminal Code and we therefore find that the arrest was lawful.

A majority of this Commission finds that it was reasonable too. The majority accept Vokey's explanation for his decision to arrest a demonstrator. He called it "arrest for summons." In the Chairman's eighteen years of practice he has not heard the phrase used before, but the majority view accepts the Sergeant's evidence that his intention was to remove the demonstrator and the counter-demonstrator to the edge of the crowd, find out whether or not the counter-demonstrator had been hurt, whether or not he wished that a charge be laid and most importantly to ascertain the identity of the demonstrator. It should be remembered that at the time that Vokey made the arrest he was in the process of leading the counter-demonstrator away from the platform through a crowd which by this time had become exceedingly hostile toward the counter-demonstrators.

Later on, in dealing with the arrest on the north side of the building, we are called upon to determine whether or not that arrest was reasonable. The later situation is markedly different from the circumstances faced by Vokey in making the arrest on the south side of the steps, which arrest the majority has found to be both lawful and reasonable.

MINORITY VIEW

The minority view is that Vokey made a tactical error in making the arrest on the south side of the steps. The better action would have been to ignore the aggression or give a warning and get out of the crowd with the counter-demonstrator.

15. WAS THE INTERVENTION BY DEMONSTRATORS REASONABLE IN THE CIRCUMSTANCES?

There is absolutely no justification whatever for the conduct exhibited by several demonstrators following the arrest on the south side of the steps. No police officer should be treated by any individual or group of individuals as Sergeant Vokey was. He feared for his life and this Commission unanimously finds that his fears were reasonable and justified. The type of conduct exhibited by the demonstrators in question, toward Vokey is simply not to be tolerated in a free and democratic society. Canada is built on the rule of law. If the rule of law cannot prevail, the law of the jungle will. What concerns us more however is that at least some of those demonstrators involved in securing the release of the prisoner were later involved in unacceptable conduct vis-a-vis the police. The fact that they were able to free the prisoner must have satisfied them that they could act with impunity thereafter in dealing with the police.

16. WAS THE ARREST ON THE NORTH SIDE OF THE BUILDING REASONABLE

IN THE CIRCUMSTANCES?

MAJORITY VIEW

As has been noted in the submission of counsel for the City of Winnipeg Police Department: "The Commission, after 23 days of hearings, proceeded with the benefit of 'hindsight'." That, of course, is the situation that any court or administrative tribunal or quasi-judicial tribunal or commission of inquiry is in when it hears evidence of events that transpired earlier and is called upon to make decisions respecting the reasonableness of the actions of individuals involved in those events.

Counsel for the City of Winnipeg Police Department urge, in their submission, that "...the Commission should adopt a perspective of what was known to the Department at the time that the demonstration took place, and the fact that unanticipated events or circumstances arose during the course of the demonstration which necessitated immediate response by police officers."

Having carefully analyzed all of the evidence leading up to the arrest on the north side of the building, and with the benefit of hindsight, a majority of this Commission finds that the arrest on the north side of the building was lawful. Moreover all members of the Commission find that a judgmental error was made by the officer executing the arrest.

Even if one places himself in the position of the officer at the time that the decision to arrest was made, it can fairly be said that a judgmental error was committed. Exhibit 25 which is a police notice that was issued on February 9, 1976 and which was in force on October 28, 1983 deals with "civil disturbances." Part of that police notice reads as follows:

> "Policemen on duty at the scene of an unlawful assembly which might become a riot at any moment must constantly be alert. A course of action should be decided upon and a determined effort made to maintain order. Individual arrests will be of a secondary consideration at the time, but efforts must be made to identify those involved so they can be arrested later." (Underlining is ours.)

While neither officer involved in the arrest on the north side of the building was aware, prior to the arrest, as to whether or not there was an unlawful assembly which might become a riot, the Commission unanimously finds that the directive contained in the last sentence of the foregoing paragraph should have been followed by the officers.

We note that members of the City of Edmonton Police Department are expected to conform to the following guidelines dealing with minor disturbances and disorderly crowds:

> "...(4) arrests are made as a last resort, and arrested persons are removed from the area immediately.
>
> (5) Where possible, offenders are identified to be charged later, away from the scene....
>
> The emphasis is on controlling the crowd and therefore, relatively minor offences are not ordinarily enforced in favour of the more important objectives."

We conclude that what really motivated the arrest was the insistence of the photographer that an arrest be made. We do not believe that this is sufficient reason for effecting an arrest in these circumstances nor do we believe that a police officer who failed to make an arrest in these circumstances would be negligent. It was of crucial importance to identify the suspected individual so that he could be arrested later, if necessary.

The evidence is clear that no attempt was made by either constable to identify the demonstrator until after the arrest had occurred and the cruiser car into which he was ultimately placed was headed south on Donald Street. In our view, the police should have required the individual to identify himself and waited for a refusal, if any, on the part of the individual to identify himself, before effecting the arrest.

Having found that a judgmental error was made by the police in effecting the arrest of the demonstrator, we hasten to add that, taking into account all of the circumstances that existed at the relevant point in time, we can understand how the error in judgment occurred. We further wish to state that while there was an error in judgment on the part of the police, that error with the consequent arrest of the demonstrator in no way justifies the subsequent conduct on the part of certain of the demonstrators towards the police.

We pause at this point to refer once again to the attempted arrest by Vokey of a demonstrator on the south side of the steps. We have found the arrest by Sergeant Vokey to be reasonable, and now we find the arrest of a demonstrator on the north side of the building to be an error of judgment. While Vokey found himself in the midst of a hostile crowd, the officers involved in the arrest on the north side of the building did not. A majority of this Commission does not consider the above quoted regulation to be applicable to the arrest on the south side of the steps because there was a reasonable possibility that there could be further assaults committed on the counter-demonstrator.

MINORITY VIEW

The minority view is that the arrest on the north side of the building was not only a judgmental error but also may have been illegal. Unlike the majority, this view is based on the following interpretation of the evidence: the arresting officers did not have a clear view of the event which led to the arrest; there is some uncertainty as to the identity of the person who seized and threw the camera; the police officers ought to have informed the prisoner immediately of the reason for his arrest.

17. WAS THE CONDUCT OF THE DEMONSTRATORS FOLLOWING THE ARREST ON THE NORTH SIDE OF THE BUILDING REASONABLE?

Evidence was adduced of interaction between Capner and MacCoy with a demonstrator with a bicycle following the arrest on the north side of the building. Also of MacCoy's account of an exchange which she had with a woman whom she (MacCoy) encountered en route to cruiser car 1612. Our findings on these incidents are dealt with in answers to questions 26 and 27.

18. DID ORGANIZERS OF THE DEMONSTRATION LOSE CONTROL AND DID LEADERSHIP OF THE DEMONSTRATION SHIFT TO OTHERS?

Two of the marshals became leaders of the demonstration once the arrest was made on the north side of the building. Their assuming the roles of leaders was in our view necessitated by the absence of any leadership whatsoever on the part of either of the organizers. Nowhere can we find any evidence of either of the two organizers exhibiting any form of leadership or control over the demonstrators following the intervention of the counter-demonstrators. We have carefully scrutinized the viva voce evidence of all witnesses, the photographs and the videotapes in coming to this conclusion.

19. WERE THE ACTIONS OF THE POLICE OFFICER WHO PLACED THE PRISONER IN CRUISER CAR 1612 REASONABLE?

MAJORITY VIEW

The act of placing the prisoner in the car was interpreted by many demonstrators as unreasonable and it increased the intensity of the confrontation between police and demonstrators. A review of the videotapes satisfies a majority of the Commission that the police officers following the arrest tried to persuade the prisoner to get into the car. We observe active resistance on his part. The police officer was entitled to use reasonable force to place the prisoner in the car, which we find he did.

MINORITY VIEW

Unlike the majority of this Commission the minority view inclines to accept the evidence of the person who was arrested that he was asking for the reason why he should go in the car but no reason was given, and that if he had been given the reason he would have entered the cruiser car voluntarily. In the view of the majority of this Commission the prisoner knew why he had been arrested and declined to get into the car in the hope that the crowd would free him.

20. WAS THE DECISION BY THE POLICE TO REMOVE THE PRISONER FROM THE SCENE IN CRUISER CAR 1612 REASONABLE?

MAJORITY VIEW

Evidence establishes that following his arrest and particularly following the placing of the prisoner in the cruiser car, he became the focal point of the crowd's growing unrest. Bearing that in mind a majority of this Commission finds that the decision to remove the prisoner from the scene was the correct decision on the part of the police. The longer the prisoner remained at or in cruiser car 1612 the more agitated the crowd became. This agitation manifested itself in people sitting in front of and at the rear of cruiser car 1612, the rocking of the car, the throwing of leaves and other debris at the police and other conduct of a questionable nature. It is interesting to note that shortly following the departure of cruiser car 1612 with the prisoner in it, the crowd dispersed.

MINORITY VIEW

There is evidence that the head marshal repeatedly tried to communicate with the police and gave up. Another marshal succeeded in doing so. The head marshal suggested that if the prisoner's wife or a leader such as he had accompanied the prisoner the crowd could have dispersed. Counsel for the City of Winnipeg comments that this would create unreasonable and difficult security problems for the police. I fail to see that this would create problems any more difficult than those the police immediately had to face in order to remove the prisoner.

The police obviously felt the need to i) assert their authority and ii) use force if necessary to remove the focus of the crowd's anger. It is argued that not to accomplish i) in the circumstances would bring the administration of justice into disrepute and it has even been suggested that the crowd might go on to attack the embassy having tasted victory. A procedure such as the head marshal suggested would not result in diminished authority of the police; nor if the police had communicated a desire simply to calm the crowd and had explained they had to identify the prisoner to issue a future summons or appearance notice would police authority be diminished. Furthermore, I am not at all convinced by the evidence that they could not have proceeded on the spot to effect this without having calmed the crowd. The noise level was indeed high. However, the throwing of debris etc. had been stopped and the actions of the demonstrators were visibly and obviously nonviolent tactics to prevent the removal of the cruiser. The crowd was still noisy and reckless but in no way had it run amuck so to speak. Only if the police had released the prisoner and run for cover would their authority be put in jeopardy. ii) is argued for on the grounds that the crowd dispersed after the prisoner was removed. This argument simply ignores the fact that the worst violence of the whole demonstration ensued in the attempt to remove the cruiser. Certainly the ultimate end was achieved but at what cost and would there have been as much or any violence if alternatives were pursued?

21. WAS THE CONDUCT OF THE MEMBER OF THE WINNIPEG POLICE DEPARTMENT WHO WAS DEPICTED ON THE VIDEOTAPES AT THE FRONT OF CRUISER CAR 1612 WITH A DEFENDER BATON REASONABLE?

MAJORITY VIEW

Following the placing of the prisoner into cruiser car 1612 a number of people seated themselves directly in front of the car with the obvious intention of blocking its forward motion. Shortly thereafter, a number of the demonstrators arose and commenced to rock the cruiser car violently. Within seconds, a member of the Winnipeg Police Department moved rapidly along the passenger side of the cruiser car toward the front end of the car. The officer was carrying a defender baton and utilized it in what is described to us as a figure eight maneuver. This conduct on the part of the police officer along with statements alleged to have been made by him was viewed as provocative by some of the demonstrators who testified. This is one of many instances where the Commission had the benefit of viewing the activities of the particular officer on videotape. Having carefully viewed the videotapes several times and having reviewed the evidence of all witnesses who testified concerning the matter, we are not prepared to find that the conduct of the officer in question was, in the circumstances, unreasonable. Use of the baton in order to move the crowd away from the front of the cruiser car had the desired effect. No one was injured nor has an intent to injure been established. The allegation of a police officer swearing in a provocative fashion at demonstrators has not been linked satisfactorily to this officer. The most reprehensible aspect of the incident is what appears to be the deliberate manipulation of a young child by one of the demonstrators.

MINORITY VIEW

The minority view takes issue with the interpretation put by the majority on the conduct of the adult who is with the child, but otherwise agrees with the findings made in the paragraph.

22. WAS THE CONDUCT OF MEMBERS IN REMOVING DEMONSTRATORS FROM THE REAR OF CRUISER CAR 1612 REASONABLE?

MAJORITY VIEW

Having found that the decision to remove the prisoner from the scene was reasonable, in the view of a majority, it logically follows that the decision to remove demonstrators from the rear of the car was reasonable.

MINORITY VIEW

In the view of the minority the reasoning in the preceding paragraph is logically faulty. Only if one assumes that there was nothing which could be done to get the demonstrators to remove themselves does this follow. If the police had acted on the sort of suggestion made by the head marshal there is a high degree of probability this could have been done.

MAJORITY VIEW

We now deal with the question of whether or not the force utilized in removing one demonstrator in particular from the rear of the car was reasonable. During our review of the evidence we discussed three incidents in which a demonstrator in a purple shirt interacted with police officers. It should be clear from our summary that we have found no misconduct in the first incident where the demonstrator is seen on videotape to fall backward to the ground after some exchange with a police officer. The second encounter took place directly behind cruiser car 1612. Dr. Ridd did not observe police officers trying to back up cruiser car 1612 or the demonstrator in the purple shirt seated behind cruiser car 1612. Any physical contact which Dr. Ridd observed can in the view of the majority be explained reasonably as interaction between officers who want to remove an unwilling demonstrator from behind cruiser car 1612.

MINORITY VIEW

The minority view is that the physical contact by police officers which is described by Dr. Ridd and other witnesses was not justified.

UNANIMOUS VIEW

The encounter which was the subject of considerable evidence and causes all members of the Commission great concern is the third one, where a police officer alleges that the demonstrator in the purple shirt stole his forage cap, threw it, that an arrest was made and that the physical contact which followed was nothing more than the apprehension of the demonstrator by use of reasonable force which included the utilization of a baton to remove his leg from the path of cruiser car 1612 as it backed up toward Donald Street. The evidence of demonstrators is that the baton was used as a weapon against the demonstrator in question. Police evidence was that the baton was used to hit the person on the ground once on the shin to slow him down or merely as a means to remove the demonstrator's leg from the path of the cruiser car. The evidence of one police officer in our view corroborates the evidence of demonstrator witnesses sufficiently to support a finding that the force utilized, for whatever purpose was excessive. Constable Rand during the course of his interview with the Commission Investigator said of the police officer who used the baton in relation to the prisoner,

> "Q....What assistance did Constable...give you?
>
> A. As I was trying to get at (the name of the demonstrator), and he was kicking, Constable...hit him on the leg with his stick.
>
> Q. What kind of stick did Constable...have?
>
> A. Defender baton.
>
> Q. Where did Constable...strike (the name of the demonstrator)?
>
> A. On the legs.
>
> Q. On what portion of his legs? Above or below the knee?
>
> A. I just know that he was hitting him on the leg from the movement of the swing, and then (the name of the demonstrator) screaming.
>
> Q. He screamed?
>
> A. Yes.
>
> Q. Was he screaming any words or was it just a scream?
>
> A. Just a scream, a scream of pain.
>
> Q. Of pain?
>
> A. Well I can't see what else it would be.
>
> Q. How many times did...Constable...hit (the name of the demonstrator)?
>
> A. Uhm. Maybe a couple of times, just a couple of times. I remember (the name of the demonstrator) yelling a couple of times. (Pages 41 to 42 of Exhibit 34)."

We pose the rhetorical question why, if the police officer was merely trying to slow down the prisoner with one blow or move the prisoner's leg away from the rear of cruiser car 1612, Constable Rand heard at least two blows being struck, followed in each instance by a scream of pain from the prisoner. The evidence of Constable Rand in our unanimous view corroborates the evidence of demonstrator witnesses sufficiently to support a finding that the force utilized for whatever purpose, was excessive.

Moreover, we believe the evidence of Wayne Glowacki, the Free Press photographer, who testified that in the course of arresting the demonstrator in the purple shirt a police officer punched him numerous times in rapid succession. This use of force was in our opinion unreasonable and excessive.

23. WAS THE CONDUCT OF MEMBERS OF THE WINNIPEG POLICE DEPARTMENT INVOLVED ON THE NORTH SIDE OF CRUISER CAR 1662 REASONABLE?

The conduct of one officer during this incident is in our view questionable and the conduct of a second officer is without a doubt the most glaring case of misconduct on the part of police during the entire incident. We find that the officer who struck the subject with his fist on three occasions and with his elbow on three further occasions was conducting himself in a manner that was not necessary, bearing in mind that other officers had at that point taken control of the subject. The blows struck by the officer with his fist may have been necessary, but the same cannot be said of the elbow smashes which followed. The elbow smashes may in other circumstances be appropriate Tae Kwon Do techniques, but we are satisfied that here they simply were not necessary.

The officer who struck the blow with the downward swing of the baton acted, in our view, in a manner that cannot be justified by any standard. It matters not that the blow which was struck did not hit the intended target. The lack of thought behind striking the blow with the baton was exceeded only by the manner in which the blow was carried out. One can only imagine the damage which would have been caused had the blow struck the subject on the head rather than a fellow officer on the hands. The use of the baton in this fashion and under these circumstances is not consistent with training given to members of the Winnipeg Police Department and while it was defended by some members of the Department who testified, we have the impression that even they did not agree with this type of conduct.

We turn to the matter of the police officer who struck a demonstrator with a nightstick in the groin, if only to clear the air on the incident. The police officer had just been blindsided in what can only be termed as a cowardly act on the part of a demonstrator. The officer's glasses were knocked off and he responded to violence in a manner which has not really been proved before us because the person who was struck not only did not testify but refused to be interviewed by the Commission's Investigator. While the use of the baton in this fashion is not consistent with training given to members of the Winnipeg Police Department we are not prepared to find any fault on the part of the police officer in question.

24. WAS THE CONDUCT OF THE MEMBER OF THE WINNIPEG POLICE DEPARTMENT ON THE MEDIAN OF DONALD STREET WHO REMOVED THE DEMONSTRATOR FROM BLOCKING THE PATH OF CRUISER CAR 1612 REASONABLE?

The evidence on this is comprised of brief portion of one videotape, the viva voce evidence of the prisoner who was seated in the back of cruiser car 1612 and the report of the Commission's Investigator. Neither of the two police officers in cruiser car 1612, one of whom testified, saw anything of this incident. This is difficult to comprehend in light of the fact that both officers must have been looking ahead as the car proceeded south on Donald Street. While the evidence of the numerous witnesses to the event whose accounts are set out in the Commission's Investigator's Report varied in detail as to exactly what transpired, there is a common thread which runs through the evidence and that is that the demonstrator was kicked more than once by the officer after the officer removed him from blocking the path of cruiser car 1612 while on Donald Street. The conduct of the officer in kicking the demonstrator is, in our view, another example of an excessive use of force.

In tab 6 of their written submission, Counsel for the Winnipeg Police Association deal inter alia with the evidence which touches on this incident. They make the point that summaries of statements contained in Exhibit 34 had not been subject to cross-examination and that these accounts are subject to this limitation. We have kept this point in mind in assessing the weight of statements which are dealt with in Exhibit 34.

However, in connection with this incident the case against the police officer is dealt with in the sworn evidence of the prisoner who was seated in the back of cruiser car 1612, whose evidence is in large measure corroborated by videotape, police evidence and by statements which are summarized in Exhibit 34.

At page 13 of tab 6, Counsel for the Winnipeg Police Association invite us to refer to the statement of Charles Gordon McDougall, one of two impartial observers who happened to be on the top of Gord's Ski Shop, directly across from the United States

Consulate, when the event which is under consideration took place. We agree with Counsel for the Association that Mr. McDougall's account is worthy of consideration and we take it into account. Mr. McDougall said:

> "Q. What is your opinion of the police action at this incident?
>
> A. Except for the bald headed policeman and his extreme use of force, I think the police were in a position where they had to defend themselves against an overwhelming and unreasonable mob." (Underlining is ours.)

Other police evidence establishes that the "bald headed policeman", referred to by McDougall is the police officer referred to in our finding on this incident.

Moreover, Paul James Jamieson, another impartial observer who was standing on the top of Gord's Ski Shop told the Commission's Investigator inter alia:

> "That was the only incident I saw where I thought the police used excessive force. I really don't think the young fellow deserved to be hit with the nightstick in the ribs, or to be kicked as hard as he was. Other than that I think the police were justified in everything they did because they were defending themselves from the protesters."

Jamieson too was referring to the same police officer as McDougall did.

Lastly we refer to the submission of Counsel for the Police Association as follows:

> "His evidence was to the effect that he feinted kicks at (the name of the demonstrator) in order to have (the name of the demonstrator) back away from the situation. He did not recall having struck (the name of the demonstrator) and so if he did it could only be accidental."

That submission is equivalent to a plea that "I did not do it but if I did it I was drunk and cannot remember it." Suffice it to say that we do not draw the same conclusion as Counsel for the Police Association. As stated above the officer kicked the demonstrator and in doing so, used excessive force.

25. WAS THE CONDUCT OF THE DEMONSTRATOR WHO ALLEGEDLY STRUCK AN OFFICER AND KICKED ANOTHER OFFICER REASONABLE?

In the arrest of the demonstrator on the south side of the steps we have commented on the conduct of this demonstrator at an earlier instance on the day in question. We are completely satisfied that this demonstrator struck Ramsay with his fist and deliberately so. Our careful study of the tapes has satisfied us on this fact. Moreover on his admission the demonstrator kicked Rand. There is absolutely no justification for this conduct on the part of the demonstrator. In the first place we do not accept his view that Rand was "cruel", and even if he was, the demonstrator's conduct goes far beyond what can be tolerated in a democratic society. Our remarks about the conduct of the demonstrators who attacked Vokey when he made the arrest on the south side of the steps, apply all the more so here. Moreover as already indicated, we find that this demonstrator felt that he could take on the police with impunity following his and others' success in freeing the prisoner from Vokey. The conduct of this demonstrator causes us grave concern in arriving at our ultimate recommendation with respect to the disposition of criminal charges which are outstanding against seven accused persons and our recommendation with respect to what should be done in relation to others not yet charged.

26. WAS THE CONDUCT OF THE DEMONSTRATOR IN POSSESSION OF A BICYCLE REASONABLE?

MAJORITY VIEW

The following is the finding of a majority of this Commission.

One of the witnesses who testified at the inquiry was a medical doctor. The conduct exhibited throughout by this witness can only be described as deplorable. His general attitude towards authority and institutions is perhaps best reflected by the fact that during the course of testifying this witness made allegations against the Commission's Investigator and Counsel for the Commission. Insofar as these allegations are concerned, they are totally beyond belief and we reject them out of hand. When pressed on his allegations, the doctor gave a performance of waffling that is in our experience unequalled.

This witness was not, in our view, attempting to give a true account of what in fact had transpired, but rather gave an account which was coloured to favour his position and that of other demonstrators and to put their activities into the best possible light. The only credible evidence that we heard from the mouth of this witness was his description of a female organizer who calmed down a heated exchange at the north side of the building near the place where Constables Capner and MacCoy apprehended the demonstrator who was taken to cruiser car 1612. We are satisfied, despite the sworn evidence of the doctor to the contrary, that he was in fact sure of the identity of the woman and that the correct version of what he saw was related to the Commission's Investigator prior to the commencement of the Inquiry. It must be borne in mind that the doctor identified the woman only after a great deal of reluctance on his part. This reluctance was not generated by the doctor's fear that he might be mistaken in identifying the woman that he did but rather arose because he simply did not want to tell the Investigator who she was.

Dealing with the same witness, we find as a fact that on at least two occasions, once on the south side of cruiser car 1612 and once on the north side of cruiser car 1662, he utilized his bicycle so as to interfere with the police as they attempted to do that which they were not only entitled to do, but also required by law to do. We accept the evidence that the doctor raised the front wheel off the ground and brought it into contact with one of the officers who was in the process of taking the prisoner to the cruiser car following his arrest. We find as a fact too that he raised his bicycle off the ground on the north side of cruiser car 1662 in an attempt to interfere with the police in the conduct of their duties.

We now move to the activities of the doctor in front of cruiser car 1612. He was one of the first demonstrators to be seated directly in the path of the car. His intent was to block its forward progress. This conduct which we find to be totally inappropriate was exacerbated by the doctor's leading and participating in the violent rocking of the cruiser car. In his evidence before us the doctor said that he is sorry for rocking the car, but his regret is for the wrong reason. He said that he is sorry because his act was futile and did not accomplish its purpose. We would have expected a man of his training with the benefit of hindsight to have recognized that his conduct was fully unacceptable, ill-conceived and dangerous. The absolute lack of concern for the physical and mental well-being of others as demonstrated by this witness is most reprehensible when one considers that he is a medical doctor. One can only wonder what motivates a person such as this doctor to conduct himself in the manner in which he did.

MINORITY VIEW

The following is the finding of the minority of this Commission.

The most charitable interpretation which can be placed on this demonstrator's evidence is that he made four assumptions for which he had no foundation. He assumed that it was the female marshal whom we saw at the north side of the United States Consulate as the person who calmed down a volatile situation between a demonstrator and counter-demonstrator. He assumed that an injustice was being done by the police in making the arrest at the north side of the building. He assumed that the police could be persuaded to let the prisoner go. He assumed that his interview with the Commission Investigator and Commission Counsel was to be kept within the four walls of the interview. Each of these assumptions was totally unwarranted given the evidence or knowledge he had at the particular time.

I find that this demonstrator used his bicycle to delay and obstruct the progress of the police officers to buy time in order to convince the police that the prisoner should be released. He also used his bicycle in order to obstruct police around the cruiser car.

The tactic of sitting in front of the car was a non-violent means of protest. Given that I have some question about the lawfulness of the arrest and that there were reasonable alternatives to removing the prisoner from the scene, I do not find this action inappropriate. I find it to be an appropriate act. In contrast, the rocking of the car, throwing rocks and kicking at police were wholly inappropriate. From a subjective point of view, this person was not justified in sitting in front of the car because he did not know that the arrest was open to question. He had no information about it and jumped to a conclusion about it.

While the rocking of the car was a completely unjustified act, it did not last long. This demonstrator's actions did not seriously endanger the physical well-being of anyone, though some mental distress may have been caused momentarily to those inside the car.

27. WHAT WAS THE ROLE OF THE MARSHAL WHO WAS ARRESTED AT DISTRICT 6 POLICE STATION?

MAJORITY VIEW

Evidence discloses that the person in question encouraged people to attend the demonstration. She herself attended, arriving late. She was appointed a marshal, although she was not wearing an armband or any other identification. In addition to assuming responsibilities as a marshal, she actively and noisily participated in various chants during the peaceful portion of the demonstration. A look of consternation most aptly describes this marshal following the arrival of the counter-demonstrators. This consternation did not last long as she quickly organized and participated in the human chain that was formed on the north side of the steps. She then became actively involved in events as they proceeded on the platform itself. From this point on this marshal became the effective leader of the demonstrators. Of her own volition, she tore up signs belonging to the counter-demonstrators as a symbolic gesture that control of the demonstration had been returned to the organizers. This act heightened the excitement of the crowd. Once she saw that she could evoke a sympathetic response from the crowd of demonstrators, it is the view of a majority of this Commission that her role as a leader was confirmed in her own mind.

Following her departure from the steps this marshal proceeded to the north side of the Consulate where a confrontation was taking place between a demonstrator and counter-demonstrator. She interceded and calmed down the situation. The marshal denies being present. However we do have the evidence of the doctor who identifies the marshal as being the person who interceded in the event. In discussing the Doctor's evidence we have indicated that we find that he genuinely believed that he saw the marshal in such location.

There is also evidence of police officers which indentify this marshal as being a person who interfered with Constable MacCoy en route to cruiser car 1612. We are unable to make a finding as to the identity of the person who said the words, if they were in fact said.

During and shortly after the placing of the prisoner in cruiser car 1612, the marshal was very active in the vicinity of the cruiser car. She can be seen on the videotapes in various locations speaking to various police officers. Because of the noise level that existed it is impossible to determine from the tapes what was being said by the marshal. She does appear to be very excited during most of the discussions. She certainly is seen to wave her hands and arms as she is talking. We are not convinced, however, that she directed any person or persons to sit down in front of or behind cruiser car 1612. Those police officers who testified otherwise are in our view mistaken. As to whether or not the marshal "threatened Sergeant Nicholson" we prefer to accept the evidence of Nicholson. Throughout incidents at cruiser car 1612 the marshal as we already have noted appears to be highly excited, whereas Sergeant Nicholson to the contrary appears relatively calm.

Having assumed the role of leader and being in the excited state to which we have alluded, we find that other demonstrators followed her lead and became more and more excited as events unfurled.

We then have the interaction between the marshal and Daly. At this point she is the centre of attention. She points at Daly and says "There is the guy who is causing the problem. Let me tell you what happened." Her recollection of this event is that Daly had at this point agreed to drop the charge on payment of damages of $100.00. Having carefully reviewed the tapes of the event and having carefully scrutinized the evidence viva voce of the witnesses to the point there is no doubt that Daly had not made any deal. The marshal is plainly mistaken in her recollection of the sequence of events. We can understand her mistake because it is another example of a person who is highly excited trying to recall the event in question.

Having found as a fact that the above quoted remarks were made prior to any such deal having been made we are satisfied that the marshal made the remarks in order to excite the crowd and direct it's attention against Daly. Her object must have been to force Daly to change his mind and to agree to drop the charge. The conduct displayed by the marshal at this point cannot be condoned.

Then there is the question of whether she put her arm in the window and tried to hit Constable MacCoy. While one could find that her denial is explained by her state of excitement, on this point we must say that we are not satisfied that the event took place as recollected by the police officers. While something may have happened it does not appear to us that the event was nearly as serious as described. We are of the view that if the marshal had conducted herself vis-a-vis MacCoy who was sitting in the car, in the manner described she would have been arrested on the spot and charged with assaulting a peace officer or some related charge. Not only did the police fail to arrest her but she was never subsequently charged in connection with this particular incident.

That really ended the marshal's participation as leader of the demonstration.

While the person who is under consideration was initially responsible for being a marshal she quickly assumed a leadership role. Her conduct, bearing in mind that she was viewed as a leader by other demonstrators, was totally unjustified. Instead of trying to diffuse what was an extremely tense situation, her activity resulted in the heightening of tension and excitement on the part of the demonstrators. We find that once the arrest of the person was made at the north side of the Consulate everything done by the marshal was calculated to put the police and the complainant in the worst possible light and to make things as difficult as she possibly could for the police in their attempts to remove the prisoner.

Minority View

A careful review of the videotape satisfies me that the doctor erroneously assumed that the marshal was at the north side of the Consulate.

It is said that the marshal became the effective leader of the demonstrators. I cannot accept this. The head marshal is still playing a role up to the point where the prisoner is placed in the car. The head marshal is obviously holding back demonstrators away from the police. Also, I am convinced that many events took place without any leadership or with no centralized leadership. For example if there was any obvious leader of the sit-in I think it was the doctor rather than the marshal, but I really do not think any one person led it. The marshal no doubt had her own constituency that she controlled and also many "non-aligned" people who accepted her role as leader on this or that occasion. One must remember however that other groups such as the Marxist-Leninists were there; to think that the marshal could lead these demonstrators is beyond belief.

I agree with the finding that the marshal was trying to put pressure on Daly to drop the charges and although it cannot be condoned I am of the opinion that she felt that by making a deal with

Daly she would in effect diffuse the situation and achieve the release of the prisoner. I do not find her actions completely unjustified, as she was trying to resolve the situation to the best of her abilities.

28. WERE THE ARRESTS WHICH WERE MADE AT DISTRICT 6 POLICE STATION REASONABLE?

We have carefully reviewed all of the evidence which has been adduced in order to try to find a reasonable basis for the arrest of the male demonstrator who accompanied the female marshal into District 6 Police Station. We have found none. He was arrested for one reason and one reason only. That reason is that he accompanied the marshal into District 6 police station. There is no concept in Canada of guilt by association. Yet that was the basis of the male demonstrator's arrest. We therefore find that the arrest was not reasonable.

MAJORITY VIEW

As to the arrest of the marshal, a majority of this Commission finds that it was reasonable.

MINORITY VIEW

The minority view is that the arrest was unnecessary and that the manner of arrest was objectionable.

29. SHOULD CHILDREN BE PRESENT AT AND PARTICIPATE IN DEMONSTRATIONS IN LIGHT OF WHAT TRANSPIRED HERE?

Children were present at the demonstration. They were present with their parents or playing with their friends. During the peaceful part of the demonstration the children took part in chants. They and their parents undoubtedly looked upon the presence of the children as taking part in a social-political activity. In viewing the early part of the demonstration on the tapes we see at least 25 different children participating in the demonstration with their parents. Two or three of these are carried by their mothers or fathers, a couple are riding on adult shoulders, and many are walking on their own, two of whom are actually carrying signs. They appear to range in age from 6 months to 10 years.

At approximately 20:30:00 on Exhibit 13(b), the CKND camera approaches the Consulate steps from the north to ascend them. A little girl about 5 to 8 years old wearing a medium brown coat with a hood is briefly seen on the steps behind the head marshal. This is approximately one minute before the counter-demonstrators enter the crowd and climb the Consulate steps. This little girl is the only child actually seen on the steps at any time.

When the action moved over to cruiser car 1612 and the interaction between demonstrators and police officers increased, fewer children were visible. Plainly the child, age 8 was present and kept by family friends in the front of cruiser car 1612 in full view of his father being arrested and his mother being in a hysterical state. The child is seen on the videotape in front of cruiser car 1612 with a toy gun in his hand, while the cruiser car is being rocked and the figure 8 defender baton demonstrator. The child is given a first hand lesson in defiance of the police. Further he was exposed to the possibility of physical injury, whether from the movement of the car or from police reaction to the rocking of the car. It is difficult for us to comprehend why the child was not removed from the scene.

Exhibit 12-96, 97, 98, 99, 100 and 101 show two young children, upset, standing near the interaction between the demonstrator in the purple shirt and at least three police officers. They are being held by the hand by a short, squat woman wearing a black sweater and glasses. A babe in arms is evident over Rand's head in photos 100 and 101. Exhibit 12-103 and 104 show two young children seated in the Lada automobile which was located alongside cruiser car 1612 and in Exhibit 12-105 one of those two children has just left the car, as the other child remains in the car to be seen again in photograph 12-106. All of these children have a plain view of the interaction between the demonstrators and police.

Videotapes show a little girl in a red parka riding on a demonstrator's shoulders as he remained fairly static just to the south of cruiser car 1612. The same tape shows an older gentleman with grey hair letting one of the girls out of the backseat of the Lada car, tying in with photographs 12-105 and 106. After the demonstration has abated a male demonstrator is seen holding onto a child in a wool knit sweater about 5 to 8 years of age.

As indicated earlier, the number of children were present around cruiser car 1612 is substantially less than the number of children present in front of the United States Consulate prior to the arrival of the counter-demonstrators. Obviously, as trouble developed, most of the children were removed from the area. From accounts given to the Commission's Investigator it is clear that at least three demonstrators deliberately removed their children from the immediate area.

There can be nothing wrong with the children being present during the peaceful part of the demonstration. The situation should have been otherwise during the portion of the demonstration following the arrival of the counter-demonstrators. In our view all children should have been removed from the area the moment that the melee began.

30. DID THE PRESENCE OF THE MEDIA AFFECT IN ANY WAY WHATSOEVER THE CONDUCT OF THE DEMONSTRATORS, THE COUNTER-DEMONSTRATORS OR THE POLICE?

One counter-demonstrator said that the counter-demonstrators would not have attended at the United States Consulate had they not known or expected television cameras to be present. Many of the demonstrators made the most of the presence of the media. But for the interest of the media demonstrations of this kind would not take place as organizers would be unable to get the message out. This would be the purpose for publication of the press release which preceded the event.

From our observation of the videotapes one could say that the presence of the media accounted for much of the female marshal's activity. Ian Dovey expressed the view that she was playing to the camera. One can observe her at some point ignoring the overtures of the reporters and in other instances by her gesticulation attracting attention.

On the other hand, we are unable to find that the presence of the media materially affected the conduct of police officers. We have Glowacki's observation that an officer was blocking his view of an arrest behind cruiser car 1612. We are unable to find, however, any deliberate effort on the part of police officers to prevent media access to the event, except where safety of police officers and demonstrators was at stake.

31. WAS THERE REASONABLE COMMUNICATION AMONGST THE POLICE OFFICERS AND WAS THERE REASONABLE COMMUNICATION BETWEEN THE POLICE OFFICERS AND LEADERS OF THE DEMONSTRATION?

MAJORITY VIEW

We are satisfied, based on the evidence adduced, that not only was there adequate communication amongst the police officers at the U.S. Consulate on October 28th, 1983 but also there was adequate communication between the officer in charge and his superiors.

As between the police and the demonstrators, it is reasonable that the police should seek out the leaders of the demonstration if communication were to be necessary. Here, however, the only leader identified as such was Susan White and we have already commented on her total lack of involvement after the arrival of the counter-demonstrators. It should have been obvious to the police, however, that the head marshal and female marshal had assumed leadership of the demonstration. Whatever information was shared by the police with the effective leaders does not appear to us to have been sufficient to satisfy the queries of at least one of the apparent leaders of the demonstration. That is not to blame the police because of the lack of communication on the part of the leaders of the demonstrators to the police can also be noted. This highlights the desirability, indeed, the necessity, of encouraging pre-demonstration discussions as well as on site discussions between the police and the leaders of any proposed demonstration or counter-demonstration.

Susan White complained to us that the police officers with whom she dealt were reluctant to provide their names to her. Her evidence is contradicted by that of police officers and we are satisfied that they did in fact identify themselves to her without reluctance. Any problem that Susan White had, perceived or otherwise, could easily have been resolved had the officers been identifiable by readily visible nametags.

Demonstrators who had complaints against individual police officers, whether legitimate or not had no means of identifying those individual officers other than by numbers which appear on the hat badge. At least one officer candidly admitted in his evidence that he would have no problem whatsoever wearing a nametag as part of his uniform, if such were the requirement.

MINORITY VIEW

I think there was failure to communicate with the head marshal even though he made attempts to communicate. His own testimony is that he gave up. Also, the police should have communicated with the prisoner explaining his arrest. There was also a refusal to talk to the female marshal by MacCoy. I agree there was a lack of communication on the other side as well, compounded by White's inaction.

32. WHAT FINDINGS CAN BE MADE ABOUT THE CHILEAN EXPERIENCE?

MAJORITY VIEW

This matter was raised over and over by both demonstrators and Counsel for the demonstrators. The assertion is that because of experiences in their homeland, the Chileans in attendance at the demonstration were "terrified of the police." The action of a goodly number of those demonstrators puts the lie to the assertion. For example, all that one has to do is to view the photographs and the tapes to determine that there is no fear whatsoever on the faces of those Chileans present. Interestingly enough none of the Chileans who testified before the Commission admitted to being afraid of the police. Moreover there is a theme running throughout the presentation of the demonstrators and organizers that some special treatment should have been accorded to the Chileans having regard to their experience prior to coming to Canada. With this proposition we cannot agree. Some of the Chileans who were in attendance had been present in Canada for ten years and are now Canadian citizens. If a perception still exists based on prior experience with police in a police state, there may be some lacking in the education of such persons on admission to Canada. It was forcibly argued that police officers should be educated in the background experiences of people like the Chileans. However, when pressed not one demonstrator could tell us of anything that had been done to educate the Chileans about the Canadian way of life.

MINORITY VIEW

I agree with the findings of the Majority in this section except that I see fear on the prisoner's wife's face in the videotape.

33. WHAT RECOMMENDATIONS DOES THIS COMMISSION MAKE AS A RESULT OF THIS INQUIRY?

(i) that criminal charges which are outstanding against the seven demonstrators be stayed;

(ii) that no further charges be laid against any person as a result of the activities at or near the United States Consulate on

October 28th, 1983;

(iii) that no internal proceedings be taken against any police officer as a consequence of the events at the United States Consulate or at District 6 Police Station.

It should be clear from our findings that each segment of the community present at the demonstration contributed to the events of the day. Criminal charges were laid against seven demonstrators. No criminal charges were laid against police officers. No criminal charges were laid against counter-demonstrators. As indicated we have found unreasonable conduct to a significant degree on the part of representatives of each such segment. With the exception of the actions of at least one of the demonstrators the conduct of demonstrators was relatively minor. Prosecution of the cases to their conclusion will be costly and with the exception of the one instance just referred to, punishment in the event of a conviction may well be minimal, perhaps with disposition by way of a discharge.

A Court might well expect more of police officers in the circumstances of this case, although we do not think that the actions of the four police officers can be equated to that of the demonstrator. Again prosecution of the police officers would involve costly trials which could end in disposition without significance.

The events of October 28th, 1983 were unique in the experience of police and demonstrators. There was the unexpected arrival of the counter-demonstrators and much should have been learned by each of the three segments involved;

(iv) that course contents for training as a member of the Winnipeg Police Department be enriched in the area of crowd management and that there be greater postgraduate courses available to members of the Department;

(v) that one year after the filing of this report the Winnipeg Police Department be required to report to this Commission as to what steps have been taken to implement new programs in crowd management and police education;

(vi) that the Winnipeg Police Department either through the Community Relations Department or another appropriate Department arrange to take part in extensive meetings and contact with various minority groups in the City and that such meetings take place on a regular basis.

The events of October 28th, 1983 were unequalled in the experience of police officers and they had not been trained in crowd management to a degree which will be sufficient to deal with the problem should the events of October 28th, 1983 recur. Techniques of crowd management, that is of reading and managing a crowd before it reaches the stage of being classed as a riot have been developed by Dr. Irving Goldaber of Florida in consultation with the Ontario Provincial Police and Edmonton City Police Department. We are pleased to note from the submission of Counsel to the City of Winnipeg that following the initiation of the Inquiry the Winnipeg Police Department has taken steps to enhance the undergraduate and postgraduate courses for police officers in relation to crowd management;

(vii) that all members of the Winnipeg Police Department be required to wear a visible nametag.

At the present time members of the Winnipeg Police Department do not wear nametags, although they do have individual police numbers on their forage caps. On the other hand members of the R.C.M.P. and Calgary Police Department wear visible nametags. If members of the Winnipeg Police Department had worn nametags on October 28th, 1983 the problem which many demonstrators perceived would have been avoided. At least one police witness at the Inquiry said that he would have no difficulty wearing a nametag;

One of our most important tasks is to make recommendations to minimize the risk of a melee of this kind recurring. During the course of the Inquiry, many allegations were made as to lack of communication on the part of various parties. In our view greater communication is most important in arriving at a solution to the problem.

In making our recommendations the Commission has taken into account the right of individuals to demonstrate peacefully, the law enforcement responsibilities of the police and the psychological principles that influence the behaviour of crowds. Basic to our recommendations is the belief that competency and accountability will avoid or minimize occurrences of this kind in the future.

(viii) We propose the following guidelines:

A. POLICE:

1. that the Winnipeg Police Department should develop readily available contingency plans relative to crowd management and crowd control applicable to those sites commonly utilized

by demonstrators and/or crowds. The American Consulate, Legislative Building, City of Winnipeg Civic Centre, Convention Centre, Centennial Concert Hall, Winnipeg Arena, Assiniboia Downs and all City Parks are examples of primary sites for crowds and/or demonstrations;

2. that the Winnipeg Police Department should designate a special unit which would operate on a continuing basis to:

    (a) monitor crowd events,
    (b) collect information,
    (c) evaluate information,
    (d) disseminate information,
    (e) liaise directly with crowd leaders,
    (f) determine what identification is being used by crowd organizers or marshals in attendance (i.e. arm bands); and
    (g) plan specific policing strategies regarding crowd management and control at all significant events;

The unit can be comprised of one or more persons and the function of an existing unit such as the crime prevention unit or research and planning unit could be expanded to fulfill the function.

3. that a Duty Inspector be assigned, as the Officer-in-Charge, to all demonstrations to ensure that there is a coordinated and effective deployment of police personnel and equipment. The emphasis here should be on a coordinated effort rather than individual action;

4. that all Duty Inspectors receive extensive crowd management and crowd control training similar in content to that which is presently provided in Ontario and Edmonton Police Departments;

5. that present general in-service training courses offered by the Winnipeg Police Training Division include a segment on crowd management. Such training will better prepare police personnel dispatched to the scene of a demonstration, particularly in instances where the demonstration is a spontaneous one;

6. that training presently provided to Crowd Control Units emphasize crowd management more than it presently does;

7. that the Winnipeg Police Department should develop and make handout literature available to designated leaders of a demonstration. This literature should be in a form similar to that which is available to participants in labour disputes.

B. ORGANIZERS:

1. that organizers of any demonstration or any

counter-demonstration notify as soon as practicable a special unit designated by The Winnipeg Police Department, regarding a pending demonstration or counter-demonstration and provide:

(a) the date, time and place of the demonstration,
(b) the name of the organization(s) sponsoring the event,
(c) the objective(s) of the demonstration,
(d) the names, addresses, and telephone numbers of organizers, marshals and contact persons who will be attending the demonstration,
(e) one designated person to liaise directly with the Duty Inspector before, during and after the demonstration,
(f) a reasonable estimate of the numbers of demonstrators expected,
(g) information, if any, regarding the groups, organizations, agencies etc. that may participate.

2. that organizers and marshals be required to wear easily identifiable designations as to the function which he or she is to fulfill.

C. POLICE AND ORGANIZERS

that prior to commencement of a demonstration or counter-demonstration, organizers and police establish lines of communication and discuss procedures to be followed in the event of a disruption.

The intention of this proposal is that there be full communciation between organizers of demonstrations and counter-demonstrations, before the demonstration and at it and that police be enabled to establish communication with groups who attend, and whose attendance was not previously expected;

(ix) that as a prerequisite to the obtaining of Canadian Citizenship courses be offered to prospective citizens dealing with the rights of citizens under the Canada Charter of Rights and Freedoms and the role of police in Canadian society.

There was a misconception on the part of many demonstrators as to their legal position with respect to certain matters. For example, the female marshal seemed to think that a complainant in a theft case could require the police to release a prisoner following an arrest on a charge of theft. Demonstrators who had encountered Police Departments in Chile were said to have a concern about what would happen to the prisoner following his arrest by Winnipeg Police;

(x) that for the future all children be removed from demonstrations should any violence develop. We have dealt with our view of the role of children at demonstrations.

Much has been said by all parties during the course of the Inquiry as to respective rights of demonstrators and counter-demonstrators to freely express their views and as to the place from which each such party was entitled to express his views. One can debate whether or not in theory, absent human emotions, the counter-demonstrators were entitled to walk up the steps and raise banners and deliver a speech from the midst of the organizers of the demonstration. The events of October 28th clearly show that human emotions prevented the successful simultaneous presentation of the demonstration and counter-demonstration. Section 64 of the Criminal Code comes into play. A view was expressed that the counter-demonstrators may have breached that section as they, six in number may have assembled in a manner or so conducted themselves to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that the counter-demonstrators will by that assembly needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously. Without considering whether or not such offence was committed by the counter-demonstrators, the event stands as a clear warning to anyone who has not learned his lesson from the event, that there is provision in the Criminal Code which may pertain to such conduct, and that common sense dictates that counter-demonstrations take place away from the main demonstration. We know that some of the counter-demonstrators who appeared October 28th, 1983 had on at least one prior occasion appeared as a group and expressed their point of view at a distance from the main demonstration. The lesson has now been learned that that was the proper approach, and that the approach of October 28th, 1983 was clearly wrong. The implementation of the above suggested procedure should give the Winnipeg Police Department reasonable opportunity to be apprised in advance of a recurring situation and with the benefit of hindsight one would hope that the lesson of October 28th, 1983 would move all parties to keep their distance.

Without making any specific recommendation, the Commission is of the view that the Winnipeg Police Department should take steps to ascertain what methods, if any, could be utilized in mobilizing more quickly the crowd control unit when mobilization of same is required.

We have considered the suggestion that members of the media would be required to wear identification, or in the alternative that members of the media be required to identify themselves to police officers present at demonstrations. There is evidence that there was a belief on the part of demonstrators that Daly was with the counter-demonstrators. The demonstrator who was arrested for taking Daly's camera articulated a concern that being one of the counter-demonstrators Daly might pass on his photograph to the Chilean military. A majority of this Commission finds as a fact that the demonstrator had no such concern and that he was motivated in his confrontation with Daly by a concern that his photograph would be published and his presence at the demonstration made known to his employer. He was at the time off work because of a reported disability. On this specific point the minority view does not agree with this finding. This Commission finds that no case has been made out for imposing any restriction on the media in that regard.

Counsel for the Winnipeg Police Association seeks a recommendation that the costs of parties to the Inquiry be borne by Government. He refers to the direction which was made by the Attorney-General in the Grange Inquiry. The Grange Inquiry is the only inquiry that we know of where such provision has been made. There have been hundreds of inquiries of a federal or provincial nature, and no such provision was made so far as we are aware. Thus for example in the C.F.I. inquiry, Hydro inquiry, parties were required to instruct and pay their own Counsel.

Moreover it would not be appropriate for us to make any recommendation on this point without knowing precisely under what circumstances and for what reason the Order-in-Council being No. 1214 was enacted. It was not part of our mandate to go behind the Order-in-Council and we made no particular effort to do so. During the course of the Inquiry Counsel for the organizers claimed that the Order-in-Council had resulted from the efforts of members of the October 28th Defence Committee. We are not certain that the said Counsel had enough information to make that claim, nor, as stated, have the parties adduced any evidence on the point. In these circumstances we do not think it appropriate to make any recommendation on the point, leaving it to the parties to take up the matter with the Minister.

In closing the Commission extends its thanks to all counsel for their assistance, and to the Manitoba Association of Rights and Liberties for its submission. The Commission pays special tribute to Mr. Schulman as Commission Counsel and to Mr. Hanson as the Commission Investigator. The Commission recognizes that the tasks facing both Mr. Schulman and Mr. Hanson were many and difficult.

SUMMARY OF RECOMMENDATIONS

(i) that criminal charges which are outstanding against the seven demonstrators be stayed;

(ii) that no further charges be laid against any person as a result of the activities at or near the United States Consulate on October 28th, 1983;

(iii) that no internal proceedings be taken against any police officer as a consequence of the events at the United States Consulate or at District 6 Police Station;

(iv) that course contents for training as a member of the Winnipeg Police Department be enriched in the area of crowd management and that there be greater postgraduate courses available to members of the Department;

(v) that one year after the filing of this report the Winnipeg Police Department be required to report to this Commission as to what steps have been taken to implement new programs in crowd management and police education;

(vi) that the Winnipeg Police Department either through the Community Relations Department or another appropriate Department arrange to take part in extensive meetings and contact with various minority groups in the City and that such meetings take place on a regular basis;

(vii) that all members of the Winnipeg Police Department be required to wear a visible nametag;

(viii) that the following guidelines be implemented:

A. POLICE:

1. that the Winnipeg Police Department should develop readily available contingency plans relative to crowd management and crowd control applicable to those sites commonly utilized by demonstrators and/or crowds. The American Consulate, Legislative Building, City of Winnipeg Civic Centre, Convention Centre, Centennial Concert Hall, Winnipeg Arena, Assiniboia Downs and all City Parks are examples of primary sites for crowds and/or demonstrations;

2. that the Winnipeg Police Department should designate a special unit which would operate on a continuing basis to:

   (a) monitor crowd events,
   (b) collect information,
   (c) evaluate information,
   (d) disseminate information,
   (e) liaise directly with crowd leaders,
   (f) determine what identification is being used by crowd organizers or marshals in attendance (i.e. arm bands); and
   (g) plan specific policing strategies regarding crowd management and control at all significant events;

The unit can be comprised of one or more persons and the function of an existing unit such as the crime prevention unit or research and planning unit could be expanded to fulfill the function.

3. that a Duty Inspector be assigned, as the Officer-in-Charge to all demonstrations to ensure that there is a coordinated and effective deployment of police personnel and equipment. The emphasis here should be on a coordinated effort rather than individual action;

4. that all Duty Inspectors receive extensive crowd management and crowd control training similar in content to that which is presently provided in Ontario and Edmonton Police Departments;

5. that present general in-service training courses offered by the Winnipeg Police Training Division include a segment on crowd management. Such training will better prepare police personnel dispatched to the scene of a demonstration, particularly in instances where the demonstration is a spontaneous one;

6. that training presently provided to Crowd Control Units emphasize crowd management more than it presently does;

7. that the Winnipeg Police Department should develop and make

handout literature available to designated leaders of a demonstration. This literature should be in a form similar to that which is available to participants in labour disputes.

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2. that organizers and marshals be required to wear easily identifiable designations as to the function which he or she is to fulfill.

C. POLICE AND ORGANIZERS

that prior to commencement of a demonstration or counter-demonstration, organizers and police establish lines of communication and discuss procedures to be followed in the event of a disruption.

(ix) that as a prerequisite to the obtaining of Canadian Citizenship courses be offered to prospective citizens dealing with the rights of citizens under the Canada Charter of Rights and Freedoms and the role of police in Canadian society;

(x) that for the future all children be removed from demonstrations should any violence develop.

The foregoing 72 pages and the schedules hereto attached constitute the Report of the Manitoba Police Commission pursuant to Order-in-Council No. 1214.

All of which is respectfully submitted this 29th day of MARCH, A.D. 1985.

CHAIRMAN

Ken Hanly
MEMBER

Catherine Hiller
MEMBER

SCHEDULE "A"

LIST OF WITNESSES WHO GAVE EVIDENCE AT THE INQUIRY

1. Michael Peter Balagus.
2. Michael Bernard Bennett.
3. Wendy Diane Buelow.
4. Carl Joseph Capner.
5. Ian Dovey.
6. Paula Fletcher.
7. Diane Alice French.
8. Wayne Gary Glowacki.
9. Paul Graham.
10. Mary-Jane MacLennan.
11. Lane MacPherson.
12. Robert Fisher Mahood.
13. Richard Maxwell Middleton.
14. William Earl Nicholson.
15. Gunder Ortiz.
16. Jorge Herman Salazar.
17. Linda Sawatzky.
18. Bruce Robert Vokey.
19. Donald Bruce Warawa.
20. Susan Lee White.

SCHEDULE "B"

LIST OF EXHIBITS

1. Order-in-Council No. 1214 dated November 9, 1983.

2. Affidavit dated January 26, 1984 of publication of Notice of Hearing sworn by Diane Andrews.

3. Letter from P. W. Schulman, Q.C. to Vic Savino dated January 20, 1984.

4. Affidavit of Del Hanson sworn April 30th, 1984 as to publication of Notice of Hearing.

5. Decision of Manitoba Police Commission dated March 12, 1984.

6. Scale drawing of U.S. Consulate and surrounding area certified by the Director of Surveys for the Province of Manitoba and dated December 14th, 1983.

7. Eight informations sworn against seven demonstrators all dated either October 29th or 30th, 1983.

8. Press Release dated October 27, 1983.

9. Press Release dated October 31, 1983.

10. Press Release dated October 29, 1983.

11. Four tapes from CKY television and they are listed (a) through to (d) both inclusive.

12. A booklet of 137 black and white photographs taken by Wayne Glowacki.

13. Two tapes from CKND television, 13A and 13B respectively.

14. Photo of the front steps of the United States Consulate.

15. Twenty-three photographs taken by Brian Daly.

16. Twenty-one photographs taken by Douglas Tottle.

17. Three photograph contact sheets produced by Michael Bennett subdivided into (a) to (c) and 31 photographs produced from the negatives of the contact sheets.

18. Ten strips of photographic negatives produced by Ms. F. Fainman.

19. 14 3" x 5" pictures.

SCHEDULE "B"

PAGE TWO

20. Two full contact sheets.

21. Thirty-three photographs taken by Wayne Glowacki and developed from Exhibit No. 18.

22. Five slides obtained from Michael Bennett.

23. A copy of Hansard from the Parliament of Canada, October 26th, 1983.

24. A Precis of the Winnipeg Police Department dated June 1982 relative to crowd control.

25. A Winnipeg Police Department Police Notice dated February 9, 1976, regarding "Civil Disturbances".

26. A copy of a Winnipeg Police Department Regulation No. S121.

27. Manitoba Police Commission decision dated July 6, 1984 regarding naming of names.

28. Medical records from Victoria General Hospital relative to Bruce Vokey.

29. Medical records from St. Boniface General Hospital relative to James Willows.

30. A copy of a Memorandum from John Guy to the Winnipeg Police Department dated January 18, 1983.

31. A letter from Del Hanson to Dr. Robert Mahood dated February 9, 1984.

32. Particulars from the Winnipeg Police Department relative to Paula Fletcher and the alleged offences.

33. A copy of a letter from Paula Fletcher to the Winnipeg Free Press from the Winnipeg Free Press issue of July 5th, 1984.

34. The statutory declaration of Delmar Herman Hanson declared October 22nd, 1984 with a report prepared by Mr. Hanson attached as Exhibit "A".

35. A statutory declaration by Rex Keating.

36. The report of Dr. Perry.

37. A letter from Sergeant Garry Sandell relative to crowd control training in the Winnipeg Police Department.

SCHEDULE "C"

THE MANITOBA POLICE COMMISSION

IN THE MATTER OF:	"The Provincial Police Act" C.C.S.M. Cap. P150;
AND IN THE MATTER OF:	Order-in-Council No. 1214 whereby The Manitoba Police Commission was ordered to investigate and enquire into all the events and circumstances surrounding the demonstration by the members of the public outside the United States of America Consulate Office in Winnipeg, on Friday, October 28th, 1983.

DECISION

J. J. Oliphant, Q.C., Chairman,

Catherine Hiller, Member

Ken Hanly, Member

THE MANITOBA POLICE COMMISSION

IN THE MATTER OF:	"The Provincial Police Act" C.C.S.M. Cap. L50
AND IN THE MATTER OF:	Order-in-Council No. 1214 whereby The Manitoba Police Commission was ordered to investigate and enquire into all the events and circumstances surrounding the demonstration by the members of the public outside the United States of America Consulate Office in Winnipeg, on Friday, October 28th, 1983.

At a hearing of the Manitoba Police Commission convened at Winnipeg, Manitoba on January 27th, 1984, certain persons and organizations were accorded status as parties before the Manitoba Police Commission relative to the above noted inquiry.

The persons or organizations accorded status as parties before the Commission are:-

(1) Paul Graham and Patrick Barnholden in their personal capacities and on behalf of the organizers of the demonstration and on behalf of those demonstrators who were present and are members of the October 28th, Defence Committee;

(2) The Winnipeg Police Association;

(3) The Winnipeg Senior Officers' Association;

(4) The City of Winnipeg.

Additionally, the Commission ruled that it would be pleased to accept briefs from any person or organization following the conclusion of the taking of evidence at the inquiry. The Commission specifically ruled that it would accept briefs from the following organizations:-

(1) The Manitoba Association of Rights and Liberties;
(2) The Quimantu Humanitarian Center;
(3) The Winnipeg Chilean Association.

During the course of the hearing on January 27th, 1984, Mel Myers, Q.C., counsel for The Winnipeg Senior Officers' Association observed that, in his view, it was inappropriate for the Manitoba Police Commission to proceed with the inquiry until such time as criminal charges which have apparently been laid against certain individuals in attendance at the demonstration are disposed of.

The Commission has no knowledge as to the names of the individuals who have been charged nor is the Commission aware of the nature of the charges that have been laid. While the Commission has not been advised that counsel for the Commission intends to call at least some of the persons charged with criminal offences to testify at the inquiry, this decision will be based on the assumption that such is the case.

There is a significant amount of case law that deals with situations akin, or at least somewhat akin, to the question facing the Manitoba Police Commission at this time. The majority of those cases were decided prior to the enacting of The Canadian Charter of Rights and Freedoms.

In the case of Batary v. Attorney General for Saskatchewan, (1965) S.C.R. 465, a person had been charged with murder and then called as a witness at a coroner's inquest into the same death. The Supreme Court of Canada held that since the person had already been charged with an offence related to the death, he was no longer subject to the rules relating to witnesses but, rather, to the rules relating to the non-compellability of an accused. Therefore, he was not compellable as a witness at the inquest and provincial legislation purporting to compel him to testify at such a proceeding was ultra vires. At page 478 of his judgment, Cartwright J. states:-

> "Such legislation trenches upon the rule expressed in the maxim nemo tenetur seipsum accusare which has been described (by Coleridge J. in R. v. Scott) as 'a maxim of our law as settled, as important and as wise as almost any other in it'."

In a later decision, the British Columbia Court of Appeal held that a person who is not charged but who is or may be suspected of, or may be later charged with, a crime or offence is in no different position from any other witness summoned to, or present at, an inquest, and may be compelled to give evidence thereat, subject to such protection with respect to incriminating statements as to which he may be entitled under applicable law. This was decided in the case of Re Wilson Inquest; Whitelaw v. McDonald and Attorney-General for British Columbia, (1968) 66 W.W.R. 522.

Another case which has been of assistance to the Commission in making its decision is that of Di Iorio and Fontaine v. Warden of Common Jail of Montreal and Brunet et al, (1976) 35 C.R.N.S. 57. This is a decision of the Supreme Court of Canada and deals, amongst other things, with the constitutional validity of an inquiry by the Quebec Police Commission into organized crime pursuant to the provisions of "The Police Act" of the Province of Quebec. The

Supreme Court of Canada held that the legislation under which the inquiry was directed was intra vires the Province of Quebec.

In his decision, Dickson J. states at page 82:-

> "There are only two questions to engage our attention: (1) Is the establishment of the Inquiry within the constitutional competence of the Province of Quebec? (2) Are the constitutional rights against self-incrimination of any witnesses appearing before the Inquiry infringed or likely to be infringed?"

And further, Dickson J., at page 90 states:-

> "De Grandpre J. (writing on behalf of a majority of the Court) held that a coroner's inquest was not a matter of criminal law. While an ancillary or incidental result of the inquest might be a finding that a crime was committed and that a specified individual was responsible, this was not the sole or primary aim of the inquest. Thus the coroner's role is not restricted to criminal matters, but extends to broader social questions such as the determination of general trends endangering the public interest and the reassurance to the public that the state is concerned with the danger and doing something about it. Broad social interests underlie the establishment of the Quebec Crime Inquiry."

It is my view that "broad social interests" underlie the establishment of the inquiry pursuant to Order-in-Council No. 1214. It is not restricted "to criminal matters".

In speaking of the Quebec Crime Inquiry, Dickson J. stated at page 90:-

> "Again there is no lis, no accused; the concern is the gathering of information, not adjudication."

The foregoing quotation is very apt in terms of the inquiry upon which the Manitoba Police Commission is about to embark.

And at page 93, Dickson J. states:-

> "Whether or not one agrees with a result which may force a person to assist in an investigation of his criminal activity, the provisions of s. 5 of the Canada Evidence Act and both federal and provincial Inquiries Acts compel such a result. Quebec's Crime Inquiry introduces no new and insidious form of investigation into our judicial system and there is no evidence before the Court that it is a colourable attempt to evade the procedural provisions of the Criminal Code."

In the case of Royal American Shows Inc. et al v. Laycraft J. (1978) 2 W.W.R. 169, a decision of the Alberta Supreme Court (Trial Division), certain individuals applied to the Court for an order prohibiting Laycraft J. in his capacity as a commissioner under "The Public Inquiries Act" of Alberta from attempting to call them as witnesses in the inquiry and for an order prohibiting the commissioner from conducting inquiries into whether the applicants, or any of them, had committed wrongful or unlawful acts which were alleged in outstanding criminal charges that had been laid against them. When the matter came before the Trial Division of the Alberta Supreme Court neither the preliminary hearings nor the trials had been held but bail had been posted by the applicants. Pursuant to his powers as a commissioner, Laycraft J. issued subpoenas to two individuals, Sedlmayr and Demay, requiring them to appear before him and to produce certain documents. Laycraft J. informed counsel for the applicants that he intended to inquire into the same matters as were the subject of the charges outstanding against the applicants.

In rendering his decision on the application for prohibition, Miller J. quoted from the judgment of Dickson J. in the Di Iorio case where he said at page 176:-

> "The Inquiry does not act as a criminal court or exercise criminal jurisdiction. The conduct of the Inquiry is not part of a criminal prosecution under the Criminal Code, R.S.C. 1970, c. C-34, nor is in an investigation into a particular crime or transaction which later might be the subject of a criminal charge. We are not here concerned with a criminal trial structured as a dispute between two sides, the Crown and the accused. The function of the Inquiry is merely to investigate and report; no person is accused; those who appear do so as witnesses; there is no lis; there is no attempt to alter criminal procudure."

Miller J. discusses the nature of an inquiry at page 183 where he states:-

> "In considering an application of this sort I believe it is important not only to review the deciding cases on the subject but also to keep in mind the essential nature and thrust of a public inquiry. In this respect I am guided and assisted by the observations of Hugessen A.C.J. when he points out that the goal of a public inquiry is to inform the government which created it as to the truth of the matter and also to inform the public by holding its hearings largely in public and by making available to the public the report of the commission."

In the matter now before us, the Manitoba Police Commission is "to investigate and enquire into all the events and circumstances surrounding the demonstration by the members of the public outside the United States of America Consulate Office in Winnipeg on Friday, October 28th, 1983, and for the purpose of the investigation and enquiry, to hold such hearings as it considers necessary....."

Upon a perusal of the Order-in-Council authorizing the enquiry it will be noted that following completion of its investigation the Manitoba Police Commission is to submit its report and recommendations to the Attorney-General.

Miller J. found that the Laycraft inquiry in Alberta "was one of investigation and report only." (At page 183) The inquiry established by Order-in-Council No. 1214 is one of investigation and report only.

In a Quebec case, R. v. Que. Mun. Commn.; Ex parte Longpre (1970) 4 C.C.C. 133, the Quebec Court of Appeal considered the position of a person charged with a criminal offence and who had already been committed for trial following a preliminary hearing being compelled to testify before a public inquiry into the same area as the criminal charge.

At pages 137-138, Brossard J.A. said:-

> "Accordingly, the only real problem is this: can a person against whom criminal proceedings are pending be compelled to testify at any trial, inquiry, or proceeding other than one whose outcome may involve his conviction, where such testimony concerns facts relating to the criminal offences with which he has been charged, and where the answers which he might give to the questions which might be put to him for these purposes could, in his opinion, constitute a confession of his guilt with respect to the offences with which he has been charged?

> The answer to this question must be in the affirmative, if ss. (2) of s. 5 of the Canada Evidence Act, which is, as we have seen, in part a criminal matter (s.2), confines to the protection assured by s. 5(2) the protection to which an accused is entitled where he has been subpoenaed as a witness in a proceeding, the outcome of which cannot in any way be a conviction against him...
>
> But does the Batary case, as the appellant suggests, go so far as to permit us to conclude that s.4 and the two subsections of s.5 of the Evidence Act, when read together, preclude the calling, as a witness, of a person already accused of an offence, to testify with respect to this offence, in a proceeding, the outcome of which cannot involve his own conviction?
>
> With respect to those who hold to the contrary, I cannot accept this proposition."

While I recognize that there are obvious differences between civil proceedings and an inquiry such as has been ordered here, there are also some similarities. Two obvious similarities are that witnesses can be compelled to testify and, additionally, can be compelled to produce documentary evidence. The question of whether or not civil proceedings should be stayed until disposition of criminal proceedings was discussed in a decision of the Manitoba Court of Appeal, namely Re Companies Act; Re Brandon Packers Limited; Rowe vs. Brandon Packers Limited et al, (1961) 35 W.W.R. 625. At page 629, Miller C.J.N. made the following statement:-

> "I am unable to subscribe to any principle which would indicate that the mere fact there are criminal proceedings pending at the same time as civil proceedings is ground for either a stay or an adjournment of the civil proceedings."

In a more recent case, Ma et al vs. McGay Ltd. et al, (1981) 6 M.R.(2d) 292 the Manitoba Court of Queen's Bench was faced with a situation where there was an application for a stay of proceedings pending the disposition of a criminal charge which, it was alleged, arose out of the same transactions as those in issue in the civil proceedings.

It is apparent from a reading of the decision of Dewar, C.J.Q.B. that whether or not a stay should be granted is a matter for judicial discretion. It is further obvious that it is incumbent upon the applicant for a stay to show some reason why the discretion should be exercised. The applicant must demonstrate that his case is an exception or a case other than ordinary.

One rationale for granting a stay of proceedings is that the right of the accused to a fair trial is prejudiced should the civil matter proceed. The question to be determined therefore by this Commission is whether the right of any of the accused persons to a fair trial will be prejudiced should the inquiry proceed prior to disposition of the criminal charges.

I do not believe that there has been any demonstration of any prejudice towards the right of any of the accused to a fair trial.

Section 13 of The Canadian Charter of Rights and Freedoms states:-

> "A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence."

From the foregoing it is obvious that if any of the accused persons testifies at this inquiry his/her evidence, if it is incriminating, cannot be used to incriminate that person in any other proceeding.

It is therefore my ruling that this inquiry by the Manitoba Police Commission shall proceed even though there has been no disposition of the criminal charges against the accused persons.

SIGNED at Dauphin, in Manitoba, this 12th day of March, A.D. 1984.

J. J. Oliphant, Q.C., Chairman,
MANITOBA POLICE COMMISSION

I concur/~~do not concur~~ and I ~~am~~/am not attaching reasons.

Catherine Hiller
Catherine Hiller, Member
MANITOBA POLICE COMMISSION

I concur/~~do not concur~~ and I ~~am~~/am not attaching reasons.

Ken Hanly, Member
MANITOBA POLICE COMMISSION

Exhibit 27
July [illegible]
Deputy
Grenada Inquiry

SCHEDULE "D"

MANITOBA POLICE COMMISSION

IN THE MATTER OF:	"The Provincial Police Act" C.C.S.M. Cap. P.150
AND IN THE MATTER OF:	Order-in-Council No. 1214 whereby the Manitoba Police Commission was ordered to investigate and enquire into all the events and circumstances surrounding the demonstration by the members of the public outside the United States of America Consulate Office in Winnipeg on Friday, October 28, 1983.

REASONS

J. J. Oliphant, Q.C. - Chairman

Catherine Hiller - Member

Ken Hanly - Member

MANITOBA POLICE COMMISSION

IN THE MATTER OF: "The Provincial Police Act" C.C.S.M. Cap. P.150

AND IN THE MATTER OF: Order-in-Council No. 1214 whereby the Manitoba Police Commission was ordered to investigate and enquire into all the events and circumstances surrounding the demonstration by the members of the public outside the United States of America Consulate Office in Winnipeg on Friday, October 28, 1983.

On Monday, May 14th, 1984, Counsel for the Winnipeg Police Association requested a ruling from this Commission as to whether or not the Commission, in its report and recommendation, intended to identify by name individuals responsible for criminal activity if the evidence indicated that criminal acts were committed during the course of the demonstration at the United States of America Consulate General Office on October 28th, 1983. Counsel submitted that on the basis of the decision rendered by the Supreme Court of Ontario, Court of Appeal in Nelles et al and Grange et al, which decision was rendered on April 12th, 1984 (as yet, unreported) and in keeping with the rules of natural justice, the Manitoba Police Commission should not identify by name those persons, if any, whose conduct might be viewed as criminal.

In my view, the prohibition by the Court of Appeal in Ontario from the Commissioner naming individuals is based on the Order-in-Council which ordered that a Commission be issued to the Commissione

That Order-in-Council is set forth in full in the decision of the Court of Appeal of Ontario and the following is an extract therefrom:-

> "NOW THEREFORE, pursuant to the provisions of the said Public Inquiries Act, R.S.O. 1980, Chapter 411, a commission be issued to appoint the Honourable Mr. Justice S.G. M. Grange who is, without expressing any conclusion of law regarding civil or criminal responsibility:....."

At page 14 of the decision the Court states:-

> "In our opinion, in the Commissioners terms of reference as stated by the Order-in-Council lies the answer to the question which he has stated. Clause 3 of the Order-in-Council directs the Commissioner to inquire into and report on and make any recommendations in respect to how and by what means the children came to their deaths. It is plain that the cause of death is the matter which the Commissioner is directed to inquire into and report upon and it is common ground that this means not only the question of whether death was caused by a fatal dose of digoxin but also whether the fatal dose was administered accidentally or otherwise. But the Order-in-Council specifically limits the Commissioner by forbidding him to express any conclusion of law regarding civil or criminal responsibility for a death or deaths. In our opinion, such a conclusion may be expressed by findings of fact which without more, when found against a named person, constitute a conclusion of criminal or civil responsibility. In the circumstances, if in carrying out the direction of the Order-in-Council the Commissioner, in determining the cause of death makes such findings, then he is by this specific limitation precluded from naming the persons whose act caused or contributed to the death or deaths of the children."

In dealing with the nature of a public inquiry generally, the Ontario Court of Appeal stated, at page 9 of the decision:-

> "A public inquiry is not the means by which investigations are carried out with respect to the commission of particular crimes or, using his words, 'deaths which are thought to have been the result of deliberate criminal acts by a person or persons unknown.' Such an inquiry is a coercive procedure and is quite incompatible with our notion of justice in the investigation of a particular crime and the determination of actual or probable criminal or civil responsibility."

And at page 11:-

> "While the constitutional validity of the Order-in-Council is not in issue in this Court, it may be that it would have been vulnerable to question had the limitation not been imposed on the Commissioner that he not express any conclusions as to civil or criminal responsibility. This inquiry should not be permitted to become that which it could not have legally been constituted to be, an inquiry to determine who was civilly or criminally responsible for the death of the children or, in the circumstances of this case in lay language simply: who killed the children?"

At the invitation of the Manitoba Police Commission, counsel made further submissions on the question for determination on June 21st, 1984.

Counsel for the Winnipeg Police Association and counsel for the Winnipeg Police Department both submitted that the law had changed substantially in Canada as a result of the decision of the Supreme Court of Canada in Minister of National Revenue v. Coopers and Lybrand, (1978) 92 D.L.R. (3d) 1. The question in that case was whether a decision of the Minister of National Revenu taken under Section 231(4) of "The Income Tax Act" to search premises and seize documents was of an administrative nature or a judicial or quasi-judicial nature. The decision of the Court was that the action of the Minister was of an administrative nature and therefore, no application would lie to the Courts for a review of the authorization.

Counsel for the Winnipeg Police Department submitted that in attempting to determine whether an act is administrative or judicial, the test of whether or not the act directly affects rights is no longer the law.

In his judgment, Dickson J. (as he then was) stated, at page 6:-

> "It is possible, I think, to formulate several criteria for determining whether a decision or order is one required by law to be made on a judicial or quasi-judicial basis. The list is not intended to be exhaustive.
>
> (1) Is there anything in the language in which the function is conferred or in the general context in which it is exercised which suggests that a hearing is contemplated before a decision is reached?
>
> (2) Does the decision or order directly or indirectly affect the rights and obligations of persons?
>
> (3) Is the adversary process involved?
>
> (4) Is there an obligation to apply substantive rules to many individual cases rather than, for example, the obligation to implement social and economic policy in a broad sense?"

Having applied the facts in that case to the second question that he raised, Dickson J. (as he then was) stated, at page 9:-

> "The ministerial decision does affect rights even though such decision requires confirmation. It is wrong in my opinion to say that because a decision requires confirmation, rights therefore are not affected. Rights are affected when premises are entered and documents seized even though the Minister does not make any final determination of the rights or duties."

That last quotation was relied upon by counsel for the Winnipeg Police Department and the Winnipeg Police Association as authority for the proposition that a substantial change in the law had occurred as a result of the decision.

While, at first blush, that argument was attractive, a closer reading of the case, in my view, discloses that it is not authority for that proposition at all. Following the posing of the questions at page 7 of the decision, Dickson J. (as he then was) goes on to state:-

> "These are all factors to be weighed and evaluated, no one of which is necessarily determinative. Thus, as to (1), the absence of express language mandating a hearing does not necessarily preclude a duty to afford a hearing at common law. As to (2), the nature and severity of the manner, if any, in which individual rights are affected, and whether or not the decision or order is final, will be important, but the fact that rights are affected does not necessarily carry with it an obligation to act judicially. (underlining mine) In Howarth v. National Parole Board, (1974), 50 D.L.R. (3d) 349, 18 C.C.C. (2d) 385, (1976) 1 S.C.R. 453, a majority of this Court rejected the notion of a right to natural justice in a parole suspension and revocation situation. See also Martineau and Butters v. Matsqui Institution Inmate Disciplinary Board, (1977), 74 D.L.R. (3d) 1, 33 C.C.C. (2d) 366, (1978) 1 S.C.R. 118."

In my view, the statement in the preceding paragraph makes it clear that there has really been no substantial change in the law.

Mr. Deutscher in his submission stated that there are 2 questions to be answered, namely, whether the Manitoba Police

Commission has the jurisdiction to name names and, secondly, whether in fact the Commission should name names.

On the second point, Mr. Deutscher asserted that the Manitoba Police Commission should not determine the question now. Rather, we should wait until all of the evidence has been heard. Mr. Deutscher went on to state that he feels that the Commission does have jurisdiction to name names.

It was Mr. Deutscher's submission that the statement found at page 11 of the Ontario Court of Appeal in Nelles et al and Grange et al was obiter dictum in that there was a specific prohibition. He further submitted that the decision of the Ontario Court of Appeal is not binding on the Manitoba Police Commission.

Mr. Deutscher expressed the view that this inquiry is a much more general inquiry than that presently being conducted in Ontario. He referred to a decision of the Manitoba Court of Appeal delivered on January 16th, 1979 where the jurisdiction of this Commission was challenged in a case commonly referred to as "the Frampton case". The challenge at that time was on the basis that Section 25(1) of "The Provincial Police Act" only allowed for general inquiries. O'Sullivan, in his decision stated that the Manitoba Police Commission has jurisdiction to make specific inquiries. Mr. Deutscher submitted that if the Manitoba Police Commission can investigate a single allegation of misconduct then to say that we have no jurisdiction to name names would fly in the face of that proposition.

In his submission, Mr. McGregor argued that as a result of the provisions of the Canadian Charter of Rights and Freedoms, particularly Section 2(d) thereof, and the Collective Agreement presently in force between the City of Winnipeg and the Winnipeg Police Association, particularly article 4 thereof, it would be offensive to the rights of police officers to have their names publicized by this Commission in connection with findings that we may make.

Section 2(d) of the Canadian Charter of Rights and Freedoms states:-

> "Everyone has the following fundamental freedoms:-
>
> (d) freedom of association."

Article 4 of the present Collective Agreement between the City of Winnipeg and the Winnipeg Police Association reads as follows:-

> " It is agreed by the parties to this Agreement that nothing herein shall affect the disciplinary powers held or exercised by the City or the Board of Commissioners, the Winnipeg Police Commission, or any statutory delegated Committee of Council of the City, and it is agreed by the City, the Board, the Commission and any Committee as aforesaid that, in all proceedings relating to such disciplinary powers, and/or relating to any matter in which the name, good character, efficiency or conduct of any member of the force in the performance of his duty is being discussed or is subject to review, such proceedings shall be carried out in camera."

Mr. McGregor also argued that the naming of names by this Commission would violate Section 7 of the Canadian Charter of Rights and Freedoms which reads:-

> "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

With respect to Mr. McGregor's submission that the naming of names would offend Section 2(d) of the Canadian Charter of Rights and Freedoms, it is my view that the Charter was not intended to allow private parties to interfere with or subvert the public interest to have a public inquiry.

With respect to Mr. McGregor's submission that the naming of names would offend Section 7 of the Canadian Charter of Rights and Freedoms, it is my view that the naming of names would not deprive anyone of his/her right to life, liberty and security of the person.

Having said all of that, it is my view that the Manitoba Police Commission owes a duty to all concerned, particularly those whose rights may be affected by whatever findings of fact and recommendations we make. If, in our ultimate report to the Lieutenant Governor in Council, we should ascribe civil or criminal responsibility to named individuals, legal proceedings, either criminal or civil, may follow. Our mandate, as set forth in Order-in-Council No. 1214, is:-

> "To investigate and enquire into all the events and circumstances surrounding the demonstration by the members of the public outside the United

> States of America Consulate office in Winnipeg on Friday, October 28, 1983....."

We are then, as soon as practicable, following the completion of our investigation to submit our report and recommendations to the Attorney-General.

One of the inherent dangers in the naming of names and the ascribing of civil or criminal responsibility is alluded to by the Ontario Court of Appeal in the case of Nelles et al and Grange et al, where, at page 16, the Court makes the following statement:-

> "Further, the fact that the findings or conclusions made by the Commissioner are not binding or final in future proceedings is not determinative of what he will decide. What is important is that a finding or conclusion stated by the Commissioner would be considered by the public as a determination and might well be seriously prejudicial if a person named by the Commissioner as responsible for the deaths in the circumstances were to face such accusations in further proceedings. Of equal importance, if no charge is subsequently laid, a person found responsible by the Commissioner would have no recourse to clear his or her name."

Insofar as members of the Winnipeg Police Department are concerned, there is, in addition to the possibility of criminal or civil proceedings being taken, the possibility of disciplinary proceedings being commenced as a result of whatever findings we may make. Would the determination by this Commission have a prejudicial effect on police officers if disciplinary proceedings are commenced and if those officers were named by the Commission? In my view the answer to that question must be in the affirmative.

Mr. Schulman, in his submission, stated that this inquiry is a general inquiry and that there is no restrictions imposed upon us from naming of names and ascribing civil or criminal responsibility. He went on to say however, that in his view, no names should be mentioned because we may, after having heard all of the evidence and deliberating, come to the conclusion that any charges presently laid be withdrawn, that no further charges be laid and that no disciplinary action be taken against any member or members of the Winnipeg Police Department.

Obviously, we are not in a position at this point in time to conclude that any of Mr. Schulman's suggestions be followed Be that as it may, the recommendations, or at least some of them, by Mr. Schulman may be followed at such time as our report is delivered to the Attorney-General. The evidence thus far has touched each of the 3 communities involved in this inquiry, namely, the demonstrators, the militia men and the police.

My overriding concern is for the future rights of persons affected by this inquiry. In order to be absolutely fair and to provide the fullest possible protection for the rights of individuals affected, it is my view that nothing would be gained by the naming of names when this Commission makes its report to the Attorney-General. Further, while the inquiry is of a general nature, it is my view that this Commission should not, in its report, ascribe civil or criminal responsibility to any individual or individuals. There are presently a number of individuals against whom criminal charges have been laid. The trials of those individuals have been adjourned pending completion of this inquiry.

The rights of those individuals to a fair trial could well be affected should this Commission comment, one way or the other, on whether or not any of those individuals were involved in criminal activity on October 28th, 1983.

I want to make it clear at this time that my decision is based on the facts of this particular inquiry which I find to be unique. In the future, I would not accept this decision as authority for the proposition that the Manitoba Police Commission is precluded forever from the naming of names or the ascribing of civil or criminal responsibility. Each matter must be dealt with on the basis of its own merits and my decision in the present inquiry is based on the particular merits of the matter before us.

Let me hasten to add that while I believe that the naming of names and the ascribing of civil or criminal responsibility will not add anything to the report of the Manitoba Police Commission to the Attorney-General, this Commission does not intend to shirk from the responsibility delegated to it by virtue of the Order-in-Council from which we obtained our mandate. There will be a thorough canvassing of all of the facts and specific findings made on the basis of those facts. Additionally, subject to the foregoing, this Commission will make whatever recommendation or recommendations it deems fit to the Attorney-General.

SIGNED at Winnipeg, Manitoba, this 6th day of July, A.D. 1984.

J. J. Oliphant, Q.C., Chairman,
MANITOBA POLICE COMMISSION

I concur/~~do not concur~~ with the decision of the Chairman and I ~~am~~/am not attaching reasons.

Catherine Hiller, Member,
Manitoba Police Commission

I concur/~~do not concur~~ with the decision of the Chairman and I ~~am~~/am not attaching reasons.

Ken Hanly

Ken Hanly, Member,
Manitoba Police Commission

Number/
Numéro

2

MANITOBA POLICE COMMISSION

GRENADA DEMONSTRATION INQUIRY REPORT

SCHEDULE "E"

SCHEDULE "E"

The following is our summary of the evidence which has been adduced at the Inquiry.

ORGANIZATION

a) Of Demonstration.

Three witnesses gave evidence at the Inquiry about the steps taken to organize the demonstration. These witnesses were: Susan White, Paul Graham and Paula Fletcher. The evidence which is before us indicates that there were 2 groups primarily responsible for the formal organization of the demonstration. These groups are: Oxfam Canada and the Canada Grenada Friendship Society. Susan White was the representative of Oxfam Canada. Dennis King was the acting president of the Canada Grenada Friendship Society. The Commission was unable to secure the attendance of Dennis King, although the Commission's Investigator was in direct contact with him with a view in mind of having him come to testify. Unfortunately Mr. King was outside of the Province of Manitoba and his attendance could not be compelled.

Susan White testified that as a representative of Oxfam Canada, she took part in the actual organization of the demonstration. She said that the decision to organize the demonstration was reached on Tuesday, October 25th, which was the first day of the events involving the United States Armed Forces in Grenada. She testified that she had received information on demonstrations in other cities, but that she did not believe that Oxfam Canada as an organization was involved in organizing demonstrations in any other city. She said that she was aware of a demonstration planned in Saskatoon for October 27th; that demonstrations had taken place in Vancouver and Toronto; and that one was planned for Wednesday, November 2nd, 1983 in Ottawa. Her evidence was that she did not consult with anyone else in Oxfam Canada, however, Oxfam has several projects in Grenada. A press release was prepared in her name the evening of October 25th, 1983 and was distributed, according to her, by Dennis King to the media. The press release is Exhibit 8 at the Inquiry.

The specific responsibilities of Ms. White as described by her were the organizing of speakers for the demonstration, the obtaining of statements of endorsement, convincing representatives of the New Democratic Party to forward a telegram to Prime Minister Trudeau and to obtain permission to read that telegram at the demonstration.

Ms. White said that there were 450 people at the demonstration and that notice of the demonstration by word of mouth prompted the attendance of most of the demonstrators. According to her interest was high and support was evident as early as the afternoon of October 25th. Dennis King and Ms. White were interviewed by various members of the media, who according to Ms. White displayed a fair amount of interest.

A device to encourage participation, commonly known as "the telephone tree" was not utilized by Ms. White, although others may have used it to encourage attendance at and participation in the demonstration. Ms. Fletcher, in her evidence, spoke of contacting 15 organizations concerned with American intervention in Central America which groups in turn contacted their respective members. Ms. White recounted that church groups and student groups actively encouraged people to attend.

Paul Graham stated that he was responsible for getting people out to the demonstration and for arranging for parade marshals. In cross-examination by Mr. Abra, Mr. Graham said that he did nothing prior to October 28th to organize the marshals. At no time did Mr. Graham speak to police officers prior to the outbreak of the disturbance. He said that there was no contingency plan in the event that a security problem developed at the demonstration. There were 6 marshals at the demonstration and Mr. Graham was the head marshal. He furnished some with green armbands. "It was not a major issue for marshals to wear armbands." Ms. Fletcher arrived after the last band had been handed out. In cross-examination by Mr. McGregor, Mr. Graham told us that at no time did he inform any police officer that the marshals could be identified by the armbands.

There is in force a City of Winnipeg by-law which requires the obtaining of a permit by the organizer or organizers of the demonstration where the demonstration is going to include activities on a street within City limits.

Ms. White stated that she notified the Winnipeg Police Department about the demonstration. She felt that it was important to check out the legal situation and to establish a co-operative relationship with the police. Despite her stated desire to co-operate Ms. White testified in essence that she received little co-operation attempting to speak to someone in authority in the traffic division of the Winnipeg Police Department. After some persistence she spoke to a Sergeant who advised her that because the demonstrators would not be on the street, a permit would not be required. He advised her to phone District 6, which she did. She spoke to a person identified by her as Staff Sergeant Crossland. She gave him details of the proposed demonstration including an estimate of 250 to 300 demonstrators. She said that the Sergeant's response was that the Police Department had been "burned" by some demonstrations in the past, because nobody showed up. According to Ms. White Staff Sergeant Crossland did not seem particularly interested in what she had to say. In cross-examination by Mr. Deutscher Ms. White testified that a schedule of events at the demonstration was not documented.

(b) By the Police.

Bruce Vokey who holds the rank of Sergeant II in the Winnipeg Police Department said that he started his shift at about 3 p.m. on October 28th at which time he was advised by Staff Sergeant Smeall of the assignment at the United States Consulate. Initially 6 members were assigned, 4 who would be on site at the Consulate and 2 of whom would be in the vicinity of the Consulate in a cruiser car. The 4 police officers at the site were comprised of 2 Sergeants and 2 Constables, all of whom arrived at about 5 p.m., when there were 40 to 60 demonstrators present. As part of the required equipment carried by police officers, Sergeant Vokey told us about portable communication equipment which allows every officer to communicate with others present and also with the communication centre of the Winnipeg Police Department.

While we do not have evidence as to how either the officials at the U.S. Consulate or members of the R.C.M.P. became aware of the demonstration, we were advised by Commission Counsel that in preparation for the demonstration U.S. Consulate offices closed early on October 28th and that 2 members of the R.C.M.P. were stationed in the Consulate premises for the protection thereof pursuant to the provisions of the Vienna Convention on Consular Relations, which imposes a "special duty on a receiving state to take all appropriate steps to protect the Consular premises against any intrusion or damage and to prevent any disturbance of the peace of the Consular post or impairment of its dignity."

(c) Counter Demonstrators.

Three counter-demonstrators testified before us. Lane MacPherson testified that he had been a member of the Royal Winnipeg Rifles, Militia Group since March 1, 1983. The group meets at the Minto Armory on Tuesdays and Thursdays and the odd weekend. About four days before the demonstration, we assume, October 25th, MacPherson was advised of the demonstration by Donald Bruce Warawa, another member of the militia group. He was advised at Minto Armories by Warawa. While Warawa did not at that point know what the demonstration was about, MacPherson said that Warawa told him that it would be at the U.S. Consulate and against the United States. Warawa told MacPherson that the Communist Party of Canada and the People's Organization against Fascist Violence would be holding the demonstration. According to MacPherson, Warawa said that they should go to express their own views in support of the United States. When asked about the matter, MacPherson denied having any knowledge of a sign advertising a counter-demonstration being posted at Minto Armories. On October 27th, 20 members of the militia group indicated an intention to go to the demonstration. There was a plan to meet at H.M.C.S. Chippawa, which is the naval base located near the U.S. Consulate, prior to the demonstration. On October 28th, 7 members of the militia group met there. Although he was not instructed to make signs prior to the demonstration, MacPherson took with him to H.M.C.S. Chippawa, 3 broomsticks, a felt marker and a roll of tape. Five signs and one banner were made. All of these signs supported the interests of the United States or were anti-communist in nature. MacPherson helped prepare one sign which read "U.S. in, Communists out". Another sign that he saw read, "Support U.S. forces in Grenada". A third read, "Support Communism, Drive a Lada". The fourth sign said, "The price of pence is eternal vigilence." MacPherson testified that Bruce Warawa assumed control from start to finish, but that had they been there as members of the militia, one of the group superior in rank to Warawa would have been in command. He testified that members of his group had attended a prior demonstration, the peace demonstration which was held at the Legislative grounds in June of 1983.

Before leaving H.M.C.S. Chippawa, MacPherson told us that the only plan made by the group was to go up the steps and speak from the steps. He said Mr. Warawa suggested that "we take the steps at the U.S. Consulate". Although no one said anything in response, all agreed with Warawa's proposal with the exception of one, Huska, who did not participate at all. MacPherson said that it was their desire to take the steps to speak from same and to attract the attention of the media. He was dressed in camouflage fatigues. Other members of the group were dressed in a like fashion, while some were not. He emphasized that no government issue army clothing was worn by any of the group. He said that his group went in 2 cars, Warawa's and his. He parked behind Gord's Ski Centre which is located directly across Donald Street from the U.S. Consulate. His car was parked out of view of the Consulate, "in case we had to get out fast, in case we were going to be arrested."

In the sentence immediately following, Mr. MacPherson made the statement, which we find very difficult to believe, namely "My intentions were not to break the law." He then went on to explain another reason for parking the vehicles behind Gord's Ski Centre, was that they had to have a getaway in case the crowd came after them. He said that he did not tell the others about his concern of being arrested, at least until after the event was over. As the group approached the demonstration, MacPherson said that Middleton and Donahue were carrying the signs and that the signs were being carried in such a manner as to hide the messages written on them. He said "He knew the crowd would not like it." MacPherson testified that his group would probably not have gone if there had not been any media coverage.

Of importance is MacPherson's statement that no one from his group informed the Winnipeg Police Department of the intentions of the group to attend. He also said that neither of the groups believed to be organizers of the demonstration, were contacted by any member of his group.

Donald Bruce Warawa gave evidence that he learned about the demonstration the evening preceding. On further questioning he admitted that the earliest he could have learned of the demonstration, was Tuesday, October 25, 1984. On which ever night it was, Warawa said that a number of the members of the militia, while in the Junior Ranks Mess at Minto Armory joked and talked about the demonstration. It was promotion night and free liquor was provided at the expense of those who had been promoted. Warawa testified that it was he who "goaded, prodded and talked the others into going." He described himself as "the gang leader". He said that it was not the intention of the group to make a vast political statement. He said in fact, "I did not know what we were planning to do." He testified that without permission, although this is usually required, he put up the signs in the Company locker room at Minto Armory before going on parade, Tuesday, October 27, 1984. Although he could not be specific about what was on the sign, he said that it was a joke more or less, the weight of the message was "Come on out to the Consulate in your Hawaiian Shirt - Tie Optional". He does not know what happened to the sign but believes that it was thrown away. On October 27, he persuaded five others to go. He said that it is fair to say that 20 drunken people had agreed to come the next day. He confirmed that the plan was to meet at H.M.C.S. Chippawa at 4:00 p.m., on October 28th and that the group would decide what to do then. He said that most of the group would not have gone, had he not talked them into it. He encouraged the group to bring with them the next day, cardboard and felt tip markers. One of the signs, as recalled by Warawa, said "Go Ronnie Go". He thought it was obvious that we would take the steps as we might as well be in a predominant spot. The group agreed that we should go up the steps of the U.S. Consulate. "It was no use being anywhere but at the heart of the demonstration." He admitted that he guessed that the group did go to disrupt. Immediately thereafter he asserted that the word "disrupt" was a bad word and that the group went to heckle. When asked by the Chairman, if "the plot was hatched at H.M.C.S. Chippawa", Mr. Warawa took strong exception to that terminology. He said he would prefer to use the words "Throw a monkey-wrench into the system". He said that the group did not talk about resistance as they did not expect resistance. He confirmed that the vehicles were parked behind Gord's Ski Centre, where they could not been seen, although the possibility of arrest did not cross his mind as we "weren't going to do anything wrong." Warawa confirmed that no one from the group had advised the Winnipeg Police Department of its intent nor were the perceived organizers of the demonstration contacted. He said that there was no plan to hide the fact that they had been at the H.M.C.S. Chippawa.

In cross-examination by Ms. Fainman, Warawa testified that he was not aware the counter-demonstration was for the purpose of expressing a view contrary to Canadian Foreign Policy. He said that they did not go to capture the attention of the media. In cross-examination by Mr. Deutscher, Warawa admitted that his group had made some mistakes, that they had misjudged the reaction of the people, that they should not have discussed their attendance at a military establishment, nor should they have gone to H.M.C.S. Chippawa.

With respect to the mode of dress of those members wearing military-style garb, Warawa said that at the time it seemed like a good thing to do as it attracted attention.

The third member of the group of counter-demonstrators to testify was Richard Middleton. He said that on either the Tuesday or Thursday preceding the demonstration someone, who he did not recall, told him that a bunch of guys were holding a counter-demonstration. Though he heard about the sign, he did not see it. He was familiar with the layout of the U.S. Consulate, as he lives nearby. He said that he drove by the U.S. Consulate on his way to H.M.C.S. Chippawa and he observed a crowd forming and television camera people set up. He said that he told members of the group that the crowd had started to form, but he said nothing about the television camera. It was not decided, according to Middleton, before they left H.M.C.S. Chippawa that the group was going to take the steps at the U.S. Consulate. He said that he was informed about this while still on the median on Donald Street in front of the Consulate. He said that it was Warawa's intention that there was no reason why the group should not be on the stairs. In cross-examination by Ms. Fainman, Middleton testified that he had been informed that the Communist Party would be at the demonstration. He also read about the proposed demonstration in newspaper reports and watched reports of same on television. He said that the major purpose of the group of counter-demonstrators was "to heckle the Communists". In cross-examination by Mr. Deutscher, Middleton said that he wanted to express a few points of his own and that the group desired an opportunity equal to that of the demonstrators, to express their view. He said that the messages on the signs were hidden because the group did not want to be interfered with by the demonstrators. He said that camouflage clothing was worn by certain members of the group as a sign of group spirit and admitted that they represented the American Military, although no one thought of the ramifications of wearing such clothing at the demonstration. He denied any discussion about taking the steps. He said "We went there with a purpose and leaving there did not serve it." He said that while the idea of the counter-demonstration was good, the method utilized by the group were wrong. Specifically, he admitted that going up the steps of the U.S. Consulate was wrong.

2. ARRIVAL OF COUNTER-DEMONSTRATORS AND EVENTS ON THE STEPS.

The witnesses to this series of events can be divided into 4 groups, namely: media, demonstrators, counter-demonstrators and police officers.

Two members of the media testified about this event before this Inquiry; Michael Balagus, formerly of CKY-TV and Ian Dovey, of CKND-TV.

Mr. Balagus testified that he and his crew arrived at the scene just before 5:00 o'clock. Upon his arrival he noticed between 100 and 200 demonstrators, but as 5:00 o'clock approached, numbers increased. He said that on his arrival there were between 4 and 6 police officers at most. When the 6 militia men arrived he was on Donald Street, closer to Bell Avenue than to the steps of the Consulate. He said that the militia men were carrying banners and signs and that he believed that the banner was rolled up. He and his camera person then moved closer to the steps. He indicated to his camera person that there was going to be trouble and he told her to get good shots. He believed that a police officer was beside him when he made those remarks. In cross-examination his exact words were "all hells going to break loose". He said that he believed that the police officer heard the remark. Mr. Balagus testified that the 6 counter-demonstrators tried to go up the steps, but that other demonstrators blocked the way. He said that he believed that 3 of the counter-demonstrators actually got onto the steps. He said that there was no attempt by the police to stop the counter-demonstrators from mounting the steps. In fact he said that there was no reaction whatsoever by the police. Then there was some pushing and shoving between demonstrators and the counter-demonstrators. Mr. Balagus believes that he saw a demonstrator strike one of the militia men.

Mr. Balagus said that from his perception it was clear that the counter-demonstrators had come to disrupt the demonstration; that they conducted themselves in a calculating manner; that they were careful; that they were taunting the people with comments and body language; that they wanted to maintain their position so that they could say they did not start trouble. He recalls hearing "we're for America-we're for freedom" from the counter-demonstrators and it was his belief that this comment was snide in the context of the moment. He testified that he tried to get up the steps but was unable to do so. He said that there was lots of pushing, shoving and yelling and that a poster which the counter-demonstrators were carrying was passed down and ripped up. He said that the police on the steps were trying to escort the counter-demonstrators down the steps and that the organizers of the demonstration were trying to get the crowd, which was aroused, to calm down.

Mr. Balagus testified that at the outset, the police seemed to show no profile whatsoever, and as events proceeded at the steps they seemed to play a low profile. The actions of the 2 or 3 police officers on the steps were directed towards escorting the counter-demonstrators off the steps and "out of there." He saw 2 militia men escorted off the south side of the steps by the police. In cross-examination by Mr. Scott, Mr. Balagus said that he did not observe the counter-demonstrators using any force prior to trying to get up the stairs. He said that Dennis King was trying to block the progress of the counter-demonstrators on the steps. The demonstrators, according to Balagus, mobilized quickly to block access to the steps.

He said that there was no attempt by the counter-demonstrators to unfurl the banner or show their signs before they got onto the steps. He said that he never saw any counter-demonstrator strike out against any demonstrator. Despite that, he said that he was not surprised at the extent of the violence shown towards the counter-demonstrators. The reaction of the demonstrators was in his opinion an emotional reaction. He said that the counter-demonstrators showed a total lack of regard to the people there. There was a potential of boiling over. There was no effort to appease the demonstrators or back off; the counter-demonstrators laughed at them, sneered at them; the counter-demonstrators were "arrogant".

He said that he believes that the demonstration was taking place on private property. He agreed that the counter-demonstrators needed protection. He also believes that the police should have encouraged the counter-demonstrators to demonstrate elsewhere. He said that he believes that the police had a responsibility to recognize the situation and to suggest that the counter-demonstrators demonstrate somewhere else.

In cross-examination by Mr. Deutscher Mr. Balagus said that he has been to other demonstrations where there have been counter-demonstrators. On those occasions counter-demonstrators had demonstrated close to but in a different place from the demonstration.

On no other occasion has Mr. Balagus seen counter-demonstrators trying to get onto the podium of the demonstrators. As the counter-demonstrators approached the steps they never broke stride until they ran into the demonstrators. He described the counter-demonstrators as being "determined to get up onto the podium." He described the counter-demonstrators as cocky. He said that they were not smiling, but rather were sneering. As the demonstrators got upset, Mr. Balagus said that the militia men smiled. He described the activities on the steps as "mayhem".

In cross-examination by Ms. Fainman, Mr. Balagus said that the police were acting in a protective role when they escorted the counter-demonstrators from the steps and in so doing the police were acting in an appropriate manner.

Mr. Dovey arrived with his crew at ten minutes to five. When he arrived there were not many people present. Shortly after five people began to arrive. At that point he described the demonstration as being "just as we expected." He did not recall seeing any police officers present at first. He said that he noticed the counter-demonstrators as they approached the steps. At this point in time Mr. Dovey was on the steps. He observed some shouting and pushing between counter-demonstrators and demonstrators. He said that the police were trying to keep them apart. He said that when Constable Rand grabbed Warawa and moved him, the police officer was trying to separate Warawa from the rest of the demonstrators.

The second group which testified as to events on the steps, namely the demonstrators, consisted of Susan White and Paul Graham.

Ms. White said that she arrived at 4:45 p.m. and that there were 20 to 30 demonstrators there at that time. Initially she saw 2 police officers. She walked up to one of them, told him her name. She asked the police officer to give his name and said "reluctantly he told me." That police officer, she said, referred her to the Sergeant. She says that she told the Sergeant that they were not expecting any problems and that she wanted to use the steps for speakers. She said that she told the Sergeant that there would be one speaker at a time. According to her he replied, "that is fine." She was pleased that the police officer had given her permission to use the steps.

She testified that Dennis King arrived at 5:20 and that he was besieged by the media. After the media interviews with Mr. King he and Ms. White went onto the steps of the Consulate. Shortly after the program began Ms. White noticed a young man with short hair and in green army type clothing coming up the steps. She said that she was shoved aside and that the counter-demonstrators held up a sign. She testified as to being frightened by the agressiveness and violence of the rush onto the steps by the counter-demonstrators. It was her view that the only people who had the right to be on the steps were the organizers, speakers and people there with her permission. She sensed the counter-demonstrators were there to cause trouble. She says that she turned around and saw a person grappling with Paul Graham. Her immediate thought was "where are the police and why are they not helping?" Within seconds, she said, a police officer came and put his hand on the attacker. She testified that she did not know if the police officer was on the steps before he placed his hand on the counter-demonstrator.

On being cross-examined by Mr. Deutscher she said that it was her understanding that permission should be obtained from the police to use the steps and that she felt that the police had the power to grant the permission. She said that she tried to establish a rapport with the police, but that they were reluctant to give their names.

In cross-examination by Mr. McGregor she said that the only people that she invited onto the steps were Dennis King and Bruno Zimmer. She said that she did not recall any children being on the steps at that time, although she did have a very slight memory of children being there.

Paul Graham testified that he arrived at about 4:55 p.m. He said that there were 200 people present when he arrived. He had no discussion with any of the 4 to 6 police officers present on his arrival. He first noticed the counter-demonstrators as preparations were under way to commence the speeches. He said that at that time Dennis King, Bruno Zimmer, Paula Fletcher, Susan White and a police officer were on the steps, along with 2 or 3 others. He first noticed 2 of the counter-demonstrators pushing people aside and mounting the steps. He said that one of the counter-demonstrators grabbed the loud hailer which he was holding and that they struggled. He said that the counter-demonstrators had a placard which they tried to hold up. He said that minimal force was used by the demonstrators in an attempt to remove the counter-demonstrators. He further said that he asked the police officer to remove the counter-demonstrators because of the disturbance; that the police officer hesitated for a while and then assisted in the removal of the counter-demonstrator. He noticed a shoving match between Dennis King and a counter-demonstrator. He said that he believed that the counter-demonstrators had to be removed with as little force as possible since he didn't want a "fist swinging brawl." He said that he turned to the crowd and said that "we're going to behave in a dignified way and not in the way that these two behaved."

In cross-examination by Mr. Abra, Mr. Graham said that following his request for assistance from the police officer on the steps, the police "took an unduly long time to respond."

In cross-examination by Mr. McGregor, Mr. Graham testified as to his belief of an "anti-left wing bias" by the police. Despite that, he said that he had no complaint about police activities at any of the several other demonstrations that he has attended.

Paula Fletcher testified that she arrived at the demonstration late and that there were about 300 demonstrators present on her arrival. She said that there were 3 or 4 police officers there at that time and that she recalled seeing police officers near the stairs. She was standing on the north side of the steps. When the speeches were about to begin she estimated that there were 400 to 450 demonstrators present. She said that the counter-demonstrators approached the steps in a single file. Their approach caused her a great deal of concern. She noted the counter-demonstrators wearing army clothes, having short haircuts and carrying placards. She remembered seeing similarly garbed counter-demonstrators at another demonstration. She believed that they were coming to create problems at the demonstration. She felt that they were a political threat to the demonstration and to the safety of the people on the platform, and perhaps the whole crowd. She said that some of the demonstrators simply ran up the north steps. She called people onto the stairs to block the rest of the counter-demonstrators from going to the top of the stairs. She said that the demonstrators just stood there and she denied the suggestion that she and other demonstrators were trying to block the media's access to the top of the stairs. She did not believe that she and other demonstrators prevented any police officer from going up the stairs. She said that the police would have been welcome in any attempt to get the counter-demonstrators off the platform. She observed pushing and jostling by the counter-demonstrators against the organizers of the demonstration. She testified that she herself was pushed by a counter-demonstrator at the top of the stairs. After the removal of the counter-demonstrators, she tore up their signs. She said that she believed that there were 2 police officers on the platform while the counter-demonstrators were there. Her explanation for the tearing of the sign was that the counter-demonstrators had come into the demonstration and were going to take it over. Furthermore, she said, that the sign "was against our point of view." She described the tearing of the sign as being symbolic of the fact that the counter-demonstrators, whom she described as provocateurs, had left and that "the invasion was over for our demonstration."

In cross-examination by Mr. Scott, Ms. Fletcher described the demonstrators as being outraged because of the counter-demonstrators and because the police did not act quickly enough to take them off the platform.

The Commission was informed that Elsa Cubas, a demonstrator who was shown on videotape on Exhibit 11B, striking counter-demonstrator, Bruce Warawa on his way up the steps, acknowledged her act and her regret for her act. It should be noted at this point that Exhibit 11B and Exhibit 13B show Paula Fletcher linking arms with other demonstrators on the steps.

Wayne MacPherson, one of the counter-demonstrators testified that the only place to go was up the steps, to speak from the steps. He said that he saw a photographer on the median, whom we know to be Brian Daly, but that he did not know the photographer. He said that the photographer did not say anything to the counter-demonstrators. He did not see Warawa push his way up the steps nor did he see Middleton. He said that he did not feel any hostilities from the crowd but acknowledged hearing the crowd yelling to the police saying "stop them." He saw a police officer on the steps. When MacPherson got onto the platform he says that he just stood there and that he did not open the banner which he was carrying. He described Warawa as "having a hard time." MacPherson testified that Warawa said "freedom of speech", at which time Warawa turned to his right "and was attacked." He said that two men blocked his way onto the steps and that both of them were Chileans in their mid-thirties. He did not observe any women form a human chain to block his way. He did not see Warawa shoving any man holding a loud hailer. He did not see Warawa take the loud haler from that man. He said that he saw a person come at Warawa and described the movement as "a lunge." He said that he did not think that the person hit Warawa but that they were each pushing and shoving.

He said that Warawa made the first contact with the man but was unable to explain how Warawa got the man into the position shown in photograph 3 as Exhibit 12, that is, with the man's back turned and Warawa apparently attacking him. He observed a police officer grab Warawa and described the police officer as having Warawa against the wall of the Consulate. He had the feeling that Warawa was under arrest. At this point MacPherson went over the steps on the north side into the crowd where he was pushed and shoved. He met another demonstrator, who he identified as Donahue and said that he helped out Donahue. He described them as having their backs to the wall. MacPherson said that he felt that all the counter-demonstrators were about to be arrested. At first he said that he didn't think that he would go to jail, as he had done nothing wrong. At this point, however, Commission Counsel reminded MacPherson that in his statement to the Commission Investigator he had said that he thought that they would be arrested and go to jail. While among the crowd in the company of Donahue, MacPherson saw a short gray haired man with curly hair kick Donahue "in the ass so hard it lifted him off the ground." Shortly thereafter MacPherson and other counter-demonstrators retreated to the median. He said that the counter-demonstrators were chanting, "go Ronny go" for a while. After that he testified that the banner which had been unfurled was torn down by a group of 6 persons including one woman. The counter-demonstrators went back to H.M.C.S. Chippawa. After attending at the Chippawa, MacPherson testified that he and Donahue drove past the Public Safety Building, where they saw some demonstrators, but that neither he nor Donahue stopped or went into the building.

In cross-examination by Mr. Deutscher MacPherson maintained his story about the man lunging at Warawa, but agreed that Exhibit 13(b) does not support that contention.

Bruce Warawa testified that if the demonstrators had been more forceful, the counter-demonstrators would not have been able to go up the steps. He said that he was not wearing any military-style clothing. Immediately upon arrival at the median, he noted alot of people at the Consulate, but no television cameras, although he did say that he saw a man who he did not know, with a 35mm camera. Warawa said that the photographer came towards the counter-demonstrators and was taking pictures. He testified that just two of the counter-demonstrators, he and Middleton, went up the steps. He said that he believes that the other four were barred. He said that he was carrying two signs under his arm with the lettering face down. His reasoning for carrying the signs in that manner was twofold, namely, to protect the lettering and to hide the message from the crowd. He said there were people in the way on the steps and that he did not ask them to move. In one case, according to Warawa, a gentleman tried to stop him, but Warawa moved him. He said that he prevented this gentleman from trying to push him down the steps. He saw a man with a loudhailer on the steps. He would not acknowledge pushing that man out of the way, but did say that he knocked the loudhailer out of the vicinity out of his (Warawa's) ear, as the man was screaming that he (Warawa) was a "Nazi punk". He admitted that both Middleton and he pushed people away in order to get up the steps. He estimated that there were 10 to 15 people on the platform and that there was a police officer near the entrance door. Though his memory was vague on the point, Warawa testified that while he was on the platform he may have yelled "Freedom of Speech". He acknowledged that he had not got permission from anyone to be on the steps. He did not realize that Mr. MacPherson had made it up the platform.

He testified that a police officer took hold of him, but he did not think that he was under arrest. He said that he thought the police officer "was going to throw me out". He testified that an elderly lady (described by Warawa as being "over 40") had spit at him and that he was annoyed.

He said that when the policeman took hold of him there had been no physical contact with the lady. He said that a younger man engaged him in conversation. It was Warawa's opinion that the police officer took hold of him "to get the situation under control". He said that he hoped that "Middleton didn't think I was about to become violent". He testified that a Chilean came up from behind and started an argument with him. He said that the Chilean called him "a baby killer". He said that he tried to explain to the Chilean that "we have a right to be here". He said that the placards were stripped from the counter-demonstrators and tramped on. He said that the counter-demonstrators tried to retrieve the signs, but that it was impossible. Warawa said that the police officer told him to stay by the glass door. The police officer then escorted Middleton out of the crowd and Warawa said that he followed them. He said that he left the platform by way of the south steps and that he observed the scuffle involving Middleton. He said that he went to see what was going on 20 feet south of the steps, that the police officer was leading Middleton away; that there was a crowd around the police officer. He said that he asked the police officer what was going on. It was Warawa's belief that Middleton was just being taken out of the crowd and further, that the police were "worried about our safety". He said that the crowd was getting rather hostile. As Middleton was being led away, a police officer moved to arrest someone and the crowd started to harass the police officer. At this point Warawa said he grabbed Middleton, and said "Let's go". Either immediately on leaving for the median or immediately on arrival on the median, Warawa gave a signal by tapping his head. This is a well known army signal which means "come to me". He said that he and the other counter-demonstrators remained on the median for 5 to 10 minutes, watching as they tried to set up their last banner which was made of tablecloth he testified that a group of 5 or 6 demonstrators came across the street, ripped down the banner and threatened them. He said that these people were lead by a female. He described this female as being 5'6", tall and "sort of thin". In cross-examination by Ms. Fainman, Warawa reiterated that a police officer had told him to wait at the rear of the platform. However, earlier we mentioned the fact that Warawa left the platform. In answer to a question by Ms. Fainman, Warawa said that no one had asked him or told him to leave the platform. He said that the police were worried about everybody's safety. He said that he thought that the counter-demonstrators were going to be seriously beaten up by the demonstrators. In cross-examination by Mr. Deutscher, Warawa denied that he and the other counter-demonstrators had tried to take over the speakers platform. He admitted that he had erred in failing to get permission to go onto the steps.

Richard Maxwell Middleton testified that when the counter-demonstators arrived at the median, a photographer, who he did not know, was taking pictures. He did not remember the order in which counter-demonstrators moved towards the Consulate, although he believed that he and Warawa were "up front". He said that rank has no bearing in a civilian situation. Paul Richard Franczyk, being senior in rank, could have been leading in a military situation. The clothing which he was wearing was his own and was not military issue. At the base of the steps, according to Middleton, the crowd "closed in on us". He said that he was carrying a sign which read "The price of peace is eternal vigilance". He testified that there was a police officer on the platform and that he saw the officer as he started up the stairs. He said that he was the first of the counter-demonstrators up the stairs and that he did not push anyone aside as he went up the stairs. He said that there was about a dozen people on the platform. The fellow with the loudhailer was yelling at a police officer to "get us out of there". He said that he believes that someone struck Warawa and that there was a scuffle; that Warawa was upset but a police officer subdued him. Middleton said that the police officer had Warawa by the lapels of his jacket, pulled Warawa away from a demonstrator and pushed him up against the wall. He testified that only two of the counter-demonstrators, including him, had got onto the platform. He said that the headband which he was wearing was ripped off, but that he did not know who did it. He said that he felt a woman spit on him and that this had occurred on the pathway between the steps and the curb. He did not see Warawa arguing with any woman on the platform. That Warawa was very angry was obvious to Middleton. He said that he thought that Warawa might try shoving back. Upon being reminded of his statement to the Commission Investigator, Middleton, admitted telling the investigator that "Warawa was going to slug this guy..." Middleton said that he was trying to calm down Warawa when a policeman took hold of Warawa. According to Middleton a police officer suggested that he escort Warawa and Middleton out of the crowd "for our own safety" and they agreed. Middleton said that the sign he raised was taken away from him by three people and that Warawa had told him let the sign go because "It wasn't worth it". The police officer, according to Middleton, told him and Warawa to leave after the sign was ripped. On his way down the south steps Middleton said that he believed that he was in front of the police officer. He said that a demonstrator yelled directly into his face; that a photographer took a photograph and that he (Middleton) was struck from behind by a demonstrator, who he could not recognize, but that the police officer arrested the assailant.

In cross-examination by Ms. Fainman, Middleton testified that he was on the platform no more than 4 to 5 minutes. In cross-examination by Mr. Deutscher Mr. Middleton said that the counter-demonstrators had dispersed. He testified that whilst on the median before going into the crowd of demonstrators, Middleton had said "It might be best for us to stay on the median, away from the crowd" but that

Warawa had said to go onto the steps. He said that the idea to counter-demonstrate was good, but that the methods utilized were wrong and that going up onto the steps was an error. Middleton said that the man on the platform holding the loudhailer was shouting at the police to get the counter-demonstrators out of there but that the police did nothing. He said that it was not the police officer who was holding Warawa against the wall that told him and Warawa to wait, but that another police officer suggested that it would be a good idea for their own safety to leave. He said that no police officer ever asked him his name or that of Warawa and that he had not at anytime been interviewed by the police, but only by the Commission Investigator. He admitted that he had been "stupid on that day". He said that it would have been more prudent for the police officer to escort him and Warawa rather than to arrest the individual who struck him.

Sergeant Vokey testified that he arrived at the Consulate at about 5:00 p.m. and that there were between 40 and 60 demonstrators present at the time. He said that Constable Rand was stationed at the front of the Consulate. When the counter-demonstrators arrived Sgt. Vokey estimated that there were 400-500 demonstrators present. Prior to the arrival of the counter-demonstrators, Sgt. Vokey described the crowd as "expressive", moving in an orderly fashion and at that time it was "peaceful".

He said that within a few minutes of his arrival, he spoke to the a woman who identified herself as Ms. White. She told him her name and address and that several people had been appointed as marshal. He said that he told Ms. White that people would have to remain off the property at #6 Donald Street (the U.S. Consulate). When the crowd got larger, Sgt. Vokey testified that it was impossible for the demonstrators to remain off the property. He believed that Ms. White later approached Sgt. Nicholson, at which time she was told that the demonstrators could use the steps as long as no one from the Consulate or the owner objected.

Sgt. Vokey first noticed the counter-demonstrators on the median. He said that there were between 5 and 7. He did not recall seeing Michael Balagus or the CKY newscar when the counter-demonstrators were on the median. He heard no one say "There is going to be trouble" or that "All hell's going to break loose". He said that he watched a group of 5 to 7 persons (who he said he did not recognize as counter-demonstrators) come across the street. It was his evidence and he was under the impression that they were just more people coming to the demonstration. He could not see what was written on the signs which they were carrying. They entered the exterior edge of the crowd opposite the north stairs, trying to move through the crowd, to the stairs. There were shouts of anger and the mood of the crowd changed. He said that he made his way over to see what was going on and that it was approximately 5:40 p.m. at this time. Upon reaching the bottom of the stairs, Sgt. Vokey observed several members of the local media. A lady, who he identified as Paula Fletcher, was organizing a human chain and yelling "This is our demonstration. Stop them, stop them." It appeared to Sgt. Vokey at this point that control of the demonstrators was shifting from the organizers to other people. It was his view that the human chain referred to was for the purpose of preventing the media from speaking to the counter-demonstrators on the platform. He wanted to assure himself that Constable Rand was in no difficulty. He described things as "getting heated", and that he attempted to get up the stairs. He said that he saw Constable Rand trying to separate two people and that Constable Rand appeared to be having some difficulty. He said that he asked people to move but that they did not comply; that the people in the human chain would not move and that he had to bodily force his way up the north steps. When he arrived on the platform, Sgt. Vokey assisted Constable Rand in separating people and in trying to keep opposing factions apart. He said that there were at least 3 counter-demonstrators on the steps and that he believes there might have been a fourth. He recognized Ms. White and Paul Graham as being on the platform. He said that Graham and Middleton had several discussions about opposing view points. While he saw that Graham was holding a loudhailer, Sgt. Vokey did not observe any actions by Graham with the loudhailer. He said that although Graham and Middleton were "nose to nose" there was no bodily contact between the two. He did not see Warawa as he was going up the steps, but he did see Constable Rand attempting to move Warawa to the south side of the steps. He did not see any counter-demonstrator raise any sign, but he saw the sign held by the two men who are depicted in photograph 2 of exhibit 12. He saw Middleton with the sign and later read the sign to see if there was anything "of a derogatory or hateful nature", which would have caused the people to react. Sgt. Vokey knew nothing about Warawa's departure from the platform but did say that he himself went down the south stairs while holding Middleton by his left shoulder. He believes that Middleton was the last of the counter-demonstrators to leave the platform. He said that he believes that I told Middleton that "he was leaving before he got killed". He said that Middleton was half a pace ahead of him and the crowd was beginning to form into sort of rows. A fellow swung out with a picket sign from the third row in the direction of Middleton's head and that he (Vokey) blocked it with his arm. He said that a fellow ran up and while running punched Middleton in the neck, causing Middleton to stagger. He said that he let go of Middleton and told the man that he was under arrest. As soon as he mentioned the word "arrest" Vokey says that he was "jumped" by 15 to 20 people.

In cross-examination by Mr. McGregor, Sgt. Vokey testified that when he first encountered Ms. White he said "Hello, I'm Sgt. Vokey". He said that Ms. White asked him for his name and that he gave it to her. He said that he would have no problem wearing a name tag with his name on it. He said that it was not usual for him not to see what was written on the signs which were carried by the demonstrators, and lots of people at the demonstration were carrying signs which he could not read. He had made a note that some of the persons who turned out to be counter-demonstrators were wearing camouflage clothing, but that this type of clothing was popular and is worn by people of that age. He noted that the camouflage clothing was not the same as worn by the Canadian Military. He said that when he first went up the stairs of the Consulate, which he described as being the easiest route to follow, there were 2 or 3 children on the stairs. He said that he did not want them to get hurt if he got knocked over.

In cross-examination by Mr. Deutscher, Sgt. Vokey said that he had no complaint about the crowd before the arrival of the counter-demonstrators. He said that he saw children playing "guns" on the north side of the steps. He said that he approached Susan White and that they came together on the steps. He said that when the counter-demonstrators arrived he was in the area of Donald and Bell. He maintained his view that the human chain was formed for the purpose of blocking the media from speaking to the counter-demonstrators on the platform. He admitted however that he saw no member of the media prevented from gaining access to the top of the stairs. He said that he concluded that the group of 5 to 7 persons was not welcome and that he went to the steps to find out the source of the problem. At the bottom of the steps he observed several people in heated discussions with the recent arrivals. He did not tell the recent arrivals to go away, as he did not think that he had a right to do so at that point. Sgt. Vokey did not see Elsa Cubas strike any of the recent arrivals. He said that when he got to the top of the stairs Constable Rand did not appear to be in difficulty. He asked Constable Rand if he was alright and if he had any information that he (Constable Rand) could give him (Sgt. Vokey). He said that Rand knew no more about what was causing the problem between the two groups than he (Vokey) did. Sgt. Vokey said that he believed that it was important to ascertain the source of the problem, in order to help resolve it. He said that Graham showed his displeasure at the presence of the new arrivals on the platform. Vokey testified that he did not tell the new group to leave as he felt the situation could still be controlled. He felt that the new group had as much right to be there as anyone else. It was Sgt. Vokey's view that the new group had the right to impart their own views. He did not expect a quiet, intelligent debate to take place. He said that he felt that he had no power to move the new group. He said that no one asked him to move the new group. He did not hear Graham say "Get these people out of here". Even while he was on the platform, Sgt. Vokey believed that the situation could be resolved peacefully. He concluded in a few moments, however, that such was not the case. He believed that he told Constable Rand "Get these guys out", advising Constable Rand to use the south steps. He said that he (Vokey) was going to find out who Richard Middleton was, who he represented, and who the others were. He believed that Middleton's safety was endangered and that Warawa was gone. He said that he believed Constable Rand would have handled Warawa the same as he (Vokey) intended to handle Middleton. He said that if he had witnessed an assault on the platform he would have made an arrest.

Sgt. Vokey admitted in his cross-examination that Susan White may well have introduced herself to him first. He said that had he been given the opportunity he would have asked Middleton why he was at the demonstration although motivation of counter-demonstrators was not a primary concern. His primary concern was getting Middleton away from the people who were getting angrier and angrier. He said that the sign which was swung at Middleton was an aimed and deliberate blow and that at this point his concern for Middleton's safety arose. He believed that he had his hands on Middleton's shoulder when Middleton was punched.

Constable Rand's, interview by Commission Investigator, may be summarized as follows:

Constable Rand was usually in the vicinity of the steps on the east side of the U.S. Consulate during the peaceful part of the demonstration. He had been told by Sergeant Nicholson that Susan White was one of the organizers, although he did not know Susan White to see her, or any of the other organizers of the demonstration that day. Constable Rand was standing on the platform or steps close to the building itself when the speeches started, and that is when he first saw a group of maybe eight young men, some of whom were wearing military garb, on the centre divider of Donald Street. Some of these young men carried placards. These young men walked across the southbound lane of Donald Street and Constable Rand did not see them again until they started coming up the north steps. Their manner of dress was not unusual in Constable Rand's mind because a lot of people in that area wear similar items of military clothing. He did not notice their haircut styles until later when they were on the steps, and his view of the militia men entering the crowd was obstructed by others on the platform and the cement abutment at the front of the steps.

Constable Rand next saw the militia men either at the bottom or while ascending the north steps when shoving and pushing began between the militia men and the demonstrators. He also noticed an increase in noise level. He remembers only two militia men making it onto the steps who he identifies in photos no. 4 and no. 7 of Exhibit 12 as Bruce Warawa and Rick Middleton, respectively, although he did not know their names. At first Constable Rand watched to see what was going on from the back of the platform as the pushing and shoving matches began. He saw Warawa and some unknown person shoving one another (photograph no. 3), and when the crowd got angry, Constable Rand grabbed Warawa (photographs no. 4 and 5) and pulled him off to the side at the back of the platform, at the same time asking Warawa what he thought he was doing (photo no. 6). While Constable Rand moved him, Warawa complained that they had the right to be there as much as the other group. Constable Rand let Warawa know that all he was doing was causing trouble-his being there is just causing trouble. Middleton joined the discussion and also told Constable Rand they had as much right to be there as the other group. (Photo no. 7). Constable Rand continued this discussion with Warawa and Middleton, (photographs 8 and 9) and decided they did have as much right to be there as the others, so he ended the conversation with them (photograph no. 10).

Constable Rand initially intervened between Warawa and the unknown demonstrator so the pushing and shoving that was going on would not develop into a fight. He did not see Warawa reach or grab for a megaphone in anyone's possession. Constable Rand did not observe any assaults, and at no time did he consider arresting either Warawa or Middleton for their actions. Constable Rand was the only policeman on the steps of the Consulate and remembers calling for assistance on his portable radio but is not sure whether he did so before or after moving Warawa. He does not recall if the demonstrators or organizers asked for him to intervene or remove the militia men from the steps. Constable Rand had been told earlier by Sergeant Nicholson that the demonstrators were given permission to use the platform for the purpose of making speeches. Constable Rand says Warawa and Middleton interfered with the demonstrators, but he did not feel justified in arresting them because he concluded Warawa and Middleton had as much right to be there and express their views as the demonstrators. There was pushing and shoving between both groups and he would have had trouble in deciding who the instigator was. It did not occur to Constable Rand to get Warawa and Middleton's names or addresses or particulars because it was not just a dispute between two people but a crowd, and he looked at it in a crowd atmosphere. Constable Rand did not at any time consider he might later wish to review Warawa and Middleton's actions with a view of laying charges, and he has not changed his attitude since.

Constable Rand vividly remembers Sergeant Vokey being on the steps at some point but does not recall any conversation with him. After leaving Warawa and Middleton (photograph no. 10) they seemed to fade out of the crowd and were not on the steps when Constable Rand headed to the north end of the building where he had noticed there were other problems. When Constable Rand left the steps to go north to Bell Avenue he did not leave Warawa and Middleton in anyone's care or custody, and he does not know if Sergeant Vokey was on the steps at the time. The pushing and shoving had quieted down a good deal and Constable Rand saw a black and white cruiser car at the north end and the crowd moving in that direction so he knew something was wrong. With the limited manpower at the time, he felt he was more needed at the other end if there was something going on down where policemen would have been in trouble, even though he did not know what may be transpiring.

The beginning of the demonstration and the arrival of the counter-demonstrators are shown in Exhibit 11A, 11B and 13B. Exhibit 11A shows Sgt. Vokey alone on the platform in front of the Consulate, Susan White walking up the north stairs approaching the Sergeant. A close viewing of the tape shows Sgt. Vokey engaged in conversation with Ms. White and him asking her for her name. It also shows Sgt. Vokey taking notes during the course of the discussion with her. The evidence touches on Ms. White's statement that the Sergeant showed no interest in what she had to say, and confirms her evidence that she approached the Sergeant. Exhibit 13B at a later point shows Warawa on arrival or just after arrival at the top of the steps (on the platform) and after what appears to be 21 seconds of uninterrupted filming, one sees Constable Rand holding Warawa by the lapels and begin to move him to the rear of the platform.

THE ARREST ON THE SOUTH SIDE OF THE STEPS

After Warawa was moved by Constable Rand to the rear of the platform Sergeant Vokey had a concern about the safety of Middleton. He testified that he believes that he told Middleton that he (Middleton) was leaving before he got killed. Vokey and Middleton walked down the south side of the steps with Middleton about one half pace ahead of Vokey. According to Vokey the crowd was beginning to form into rows. Vokey testified that a fellow swung out with a picket sign from the third row in the direction of Middleton's head, but that he (Vokey) blocked it with his left arm. Vokey said that a fellow then ran up and while running punched Middleton in the neck and that Middleton staggered. Vokey further testified that on observing this he let Middleton go and told the man that he was under arrest. As soon as he mentioned the word "arrest" Vokey said that he was "jumped" by fifteen to twenty people. He identified Middleton's assailant as Nestor Parraguez having had a clear look at his face for several seconds. Vokey testified that when he arrested Parraguez it was his intention to move both Parraguez and Middleton out of the crowd. If Middleton had wished to proceed with the charge Vokey said that it would have been his practice to release Parraguez under the provisions of The Bail Reform Act and that it was never his intention to incarcerate Parraguez.

After being jumped, Vokey testified, that he was "frightened of my life". In answer to a question posed by Ms. Hiller, Sergeant Vokey said that he was afraid of being knifed. He said that the Chileans did not appear to be afraid of the police officer because they jumped him. After being jumped by members of the crowd, Vokey testified, that they were tugging at his equipment including his firearm, that he was struck from the back; that he was hit on the hand and that his wrist was being bent to the point where it would not bend anymore. Vokey said that as a result of this struggle Parraguez was able to break loose and immediately on that occurring the crowd calmed. Vokey testified that he ended up holding Parraguez' jacket, which had come off.

In cross-examination by counsel for the Police Association Sergeant Vokey told the Commission about the equipment carried by each police officer. Each officer has in his/her possession a revolver, a spare ammunition carrier, a flashlight and flashlight holder, handcuffs and a pouch for handcuffs, a portable three channel radio and, depending on training, a defender baton and carrier.

Further in cross-examination Vokey testified that when he laid his hand on Parraguez' shoulder it was his intention to advise Parraguez that he was under arrest for assault. However, Vokey was unable to say if the word "assault" came out as he was jumped at that point.

In cross-examination by Counsel for the Chilean Association, Sergeant Vokey testified that with respect to Middleton it was his intention to find out who Middleton was, who he represented and who the other members of his group were. He reiterated that he believed that Middleton's safety was in danger.

With respect to the sign to which Vokey had alluded in examination in chief, he said that the swinging of the sign was "an aimed and deliberate blow." He testified that his concern for Middleton's safety arose at this time. He acknowledged that Middleton had time to take a kick at someone, although he did not see any such kick. He said that he believes that his hand was on Middleton's shoulder when Middleton was struck by the man who was running, but he was unable to say if Middleton was struck by or with a closed fist. He said that it all happened very fast but that he observed that the blow was struck to the base of Middleton's neck at the base of his skull. When assaulted Vokey said that Middleton staggered and that he could not think of any other event when he had witnessed an assault. After Middleton was struck Vokey said he immediately arrested Parraguez by placing his hand on Parraguez' right shoulder. Vokey testified that someone had told him that Parraguez had been kicked and that he told that person that he (Vokey) wished to talk to Parraguez.

That Vokey advised Parraguez that he was under arrest is confirmed by the sworn evidence of Jorge Salazar who testified that he "saw the cop arresting Nestor Parraguez" and "heard the policeman say 'you're under arrest'". Implied in that statement is an admission of an arrest by Vokey of Parraguez, although his version of where Middleton was struck was considerably different than Vokey's version. The point is confirmed by the sworn evidence of Wayne Glowacki, a Free Press photographer who advised the Commission that he heard Vokey tell Parraguez "you're under arrest."

Kelly Saxberg, a demonstrator, reported to the Commission Investigator that she saw a Chilean man lean forward and push the militiaman on the shoulder, albeit in a gentle manner. She said that the militiamen did not stumble. She went on to say "the policeman who was only a couple of feet behind the militiaman immediately turned around, grabbed the Chilean man with both hands by the lapels of his jacket or upper part of his jacket and said "you're under arrest." The policeman held the Chilean fellow in an agressive manner. Immediately about ten Chileans or friends of the Chilean man surrounded the policeman attempting to free him. It was sort of weird-a group of men moving together with their hands all in the middle trying to free their friend. Everyone was yelling and the guys trying to free their friend were all angrily asking the policeman various questions. That bunch disappeared around the south side of the Consulate."

Middleton in his evidence confirmed that he was struck and that the police officer arrested the man, telling him that he is under arrest. In assessing Sergeant Vokey's conduct as a whole Middleton acknowledged in cross-examination by David Deutscher that it would have been more prudent for the police officer (Vokey) to escort him and Warawa out of the crowd rather than to arrest the individual who had struck him (that individual being Parraguez.)

With respect to the events leading up to his arrest Parraguez informed the Commission Investigator as follows:

> "When one of the militia men was walking by me he kicked me real hard just below my left knee. I hadn't said anything to him and he didn't say anything to me - he just kicked me for no reason. When he kicked me I reached out with my left arm and pushed him on the shoulder."

Several photographs which form part of Exhibit 12 show Sergeant Vokey attempting to arrest Nestor Parraguez. I refer to photographs numbered 35, 36, 39 and 41 to 44, both inclusive. In these photographs Vokey is prevented from carrying out his purpose by the physical intervention of Nestor Parraguez' mother, Boris Salazar, Rodriguo Salazar, Boris Salazar's son, Nestor Molinas, Fernando Rodriguez, Jorge Salazar and others. Photograph 47 shows Parraguez' mother grabbing Vokey by the shoulders from behind.

THE ARREST ON THE NORTH SIDE OF THE BUILDING

Brian Daly, age 21, was a photographer employed by the University of Winnipeg newspaper. He had attended the demonstration in order to take pictures. He had been standing near the northeast corner of the Consulate building when the counter-demonstrators started to cross Donald Street. He crossed the street to the median and tried to engage them in conversation but received a brush off. Mr. Daly observed the counter-demonstrators approach the north side of the steps and that some of them were "pushed back off the north steps" and he observed the interaction between these counter-demonstrators and demonstrators. Daly's account to the Commission's Investigator about the events which followed is as follows:

> "I had moved ten or fifteen feet north of the steps by now and was still taking shots when someone approached me in a very calm manner and asked who I was and why I was taking pictures. I didn't know the person and can't describe him. I replied I was a photographer with the U. of Wpg. student newspaper, and he nodded his head and walked away. About 20 seconds later another guy approached me and shoved me back with both hands and said "no pictures". He pushed me again in the same manner, and I either pushed him back or yelled something at him. He turned away and melted into the crowd. Then another guy came, a third one, and said something as he lunged and grabbed at

> my cameras. Quarters were extremely close here, and I was trying to protect the cameras by holding them in close to my body, at the same time stating my right to be there by saying I was a photographer with the U. of Wpg. On his third grab this guy got ahold of the "Image" flash which was attached to my Canon camera, and tore it off breaking a portion off the hot shoe. He then turned around, took two or three steps, and threw overhand my electronic flash which landed somewhere on the grass area north of the Consulate.
> ...so I reacted by pointing at the guy and hollering something like 'that guy took my flash - I'm pressing charges'. There were a couple of police in the near vicinity who attended right away. I continued taking photos and when I looked back to see what the police were doing they were talking to a man. I cannot be absolutely sure the man the police were talking to is the same man who took my flash attachment. Neither can I describe or identify for you the man who took my flash, because it happened so fast and in close quarters. I heard one of the officers say to the man something like 'let's go get it' or 'let's go pick it up'. I believe they started to walk him towards the police car on Bell Ave., and I continued taking pictures until the action and crowd shifted to the police car on Bell."

The evidence of three police officers touches on the circumstances in which Mr. Ortiz came to be arrested. Two of the officers were involved in the arrest and one was stationed inside the Consulate building.

The two officers who were involved in the arrest were Constable Carl Joseph Capner and Constable Corrine Joan MacCoy. These officers had been assigned to the area of the Consulate building in cruiser car 1612 from the beginning of the demonstration, but had been assigned to remain in their car and to drive in the general area.

Constable Capner stated that he received a call by radio at 5:50 p.m. to attend at the Consulate building. He and Constable

MacCoy arrived at about 5:53 p.m. and parked their car on the north side of the building on Bell Avenue and facing in a westerly direction, one car width away from the curb. Constable MacCoy indicated to him that something was happening at the northeast corner of the building. He had seen it too. It was about 40 to 50 feet away. He gave evidence that he saw two men, later found to be Daly and Gundher Ortiz, pushing and shoving one another. There were people around but he had a very good view of them. At this time the Constables were getting out of their cruiser car and they approached the men in order to find out what was happening. Capner said that he saw Ortiz reach out and grab hold of the flash which was around Daly's neck. He saw a dark object fly through the air towards Bell Street. Capner picked the object off the ground and found that it was a flash attachment. He had not seen Daly using the camera equipment. The motion which he saw was Ortiz with something in his hand. Then an object flew through the air. At this point in time Capner was by the curb on the south side of Bell. Capner and MacCoy then made their way to Ortiz and Daly. Daly yelled that he wants charges brought against the man and he wants the man arrested. Capner and MacCoy both took hold of Ortiz and Capner was later told by MacCoy that she had told Ortiz that he was under arrest. Capner told Ortiz to come to the car with us in order to discuss what happened with the flash. Ortiz asked why he had to come to the car and Capner said to discuss what had just taken place.

When asked by Commission Counsel why Capner's first move was to make an arrest, Capner responded that Daly had said that he wanted Ortiz arrested and Capner felt that he had no choice but to make an arrest. From Capner's point of view the demand from the citizen was the main reason for the arrest. Capner went on to say that he had witnessed an offence being committed and it was not the place or the time to interview Ortiz. It was obvious to Capner that he had to get Ortiz out of there.

Capner acknowledged that later that day while at the Public Safety Building, Daly had been asked whether or not he could identify the man who took the camera equipment and Daly said that he is unable to do so. However, Capner maintained in evidence that Daly was standing right next to Ortiz and that Daly raised his hands to indicate that it had been Ortiz who had grabbed his equipment. In cross-examination by Counsel for the Winnipeg Police Association, Capner stated that when he and MacCoy took hold of Ortiz they were surrounded. The crowd tried to separate Ortiz from the police officers. All sorts of things were being said by the crowd such as "let him go." The crowd was very loud. The police officers did not speak to Daly and did not take him to the cruiser car.

In cross-examination by Counsel for the City of Winnipeg, Mr. Abra, Capner stated that he did not in the midst of the demonstrators have the time to make the checks which are necessary to be made prior to release of a suspect. It was impossible to run a check to see if Ortiz was wanted on other matters. At District 6 Ortiz was eventually released on an appearance notice within a couple of hours. Capner has been involved in arrests before when there was a large crowd around, but never before has he known a crowd to interfere in the way that this crowd did.

In cross-examination by Counsel for the organizers, Capner stated that there were approximately 75 people around Ortiz and Daly at the time the incident took place. He again acknowledged that Daly was unable to identify Ortiz. He denied the suggestion which was put that the flash attachment was not picked up until after the police officers took hold of Ortiz.

In cross-examination by Counsel for the Chilean Association, Capner stated that the arrest had been made because of Daly's insistence. If Ortiz had said that Daly had shoved him, Daly might have been arrested too. Capner had no idea of the events which led up to the shoving match. He maintained that he as a police officer could not tell Daly that he is not going to arrest the man. He maintained that his intention was to commence an investigation at the cruiser car by establishing the identity of Ortiz, by hearing Ortiz's side of the story. He stated that he wasn't going to turn his back on a citizen insisting on an arrest where he had witnessed the event.

Constable MacCoy's account of the arrest of Ortiz is as follows:

> "Cst. MacCoy in company with Cst. Capner were summoned to the U.S. Consulate by radio and parked cruiser car 1612 off Donald on Bell Avenue. As they got out of the car, she reported something going on at the northeast corner of the Consulate. As they approached and while still 30 or 40 feet away, they noticed it was two men scuffling. As they continued to approach the two men (later learned to be Daly and Ortiz), she noticed Daly had two cameras around his neck and Ortiz grabbed one camera as if he was going to rip the camera away. She saw a part of the camera come off and Ortiz threw this part across the grounds. Her partner went and recovered what turned out to be the flash attachment, rejoined her, and as they approached the two men together, Daly was yelling, 'I want this man arrested, I want to

> press charges, look what he did' and things like that. Daly was looking at Ortiz who was maybe a couple of feet in front of him at that time. MacCoy and Capner took a hold of Ortiz and asked him to come to the car and sort this thing out and Ortiz replied, 'I don't want to go to the car, what do I have to go to the car for, I didn't do anything'. They began escorting Mr. Ortiz to their car with MacCoy holding his left arm and Cst. Capner on the right holding his elbow. MacCoy advised Ortiz enroute to the car that he was under arrest. A lot of people had surrounded the three of them, making it difficult to walk freely to the car.
>
> Cst. MacCoy feels the least she and her partner could have done was to get Ortiz's identity and a verification of who he was to summons him at a later date, but they didn't have that information and didn't even have a chance to get it under the circumstances. MacCoy did not feel obliged to arrest Ortiz because of Daly's comments to the effect, 'I want that man arrested, I'm pressing charges' but just felt they were doing their job."

Corporal Bolton, a member of the R.C.M.P. who was stationed in the Consulate building reported to the Commission Investigator as follows:

> "He walked to the north end of the building to view the demonstrators located at that point, 'as I watched I observed an object land on the grass. It looked like a camera that someone had thrown but because of the angle I could not see who had thrown it or who it was thrown at, or exactly what it was. There were 2 City police officers, one male and one female who walked up, picked up the object and grasped a male by the arm and began escorting him to their police vehicle. It appeared that they were going to take him away in the police vehicle."

Gundher Ortiz, age 30, attended at the demonstration, as did his wife and 8 year old son. He is a Canadian citizen, having left Chile seven years ago and is employed by the City of Winnipeg Transit Department. Ortiz had seen Daly in the presence of the counter-demonstrators on the median of Donald Street. As the counter-demonstrators arrived, and Ortiz concluded that Daly was one of them. A short time after the counter-demonstrators went up the steps an incident took place at the northeast corner of the Consulate building. Ortiz says that the counter-demonstrators and demonstrators were shouting things back and forth. The photographer came up to Ortiz and tried to take his picture from very close range. The photographer was using a flash. Ortiz asked him not to take his picture, but the photographer continued to do so and he took Mr. Ortiz's picture three or four times. There was a flash attached to the camera. A person came from behind the photographer and grabbed the camera. The photographer had a leather strap around his neck so the other person could not get at the camera. The other person disappeared into the crowd and Mr. Ortiz cannot describe him. Ortiz later made efforts to find him, without success. The photographer continued to take pictures however, and Ortiz grabbed his collar and asked him why he was taking Ortiz' picture and who he was. The man did not answer. At that point Ortiz felt a hand push at his arm and it was a male police officer. It is Ortiz' clear position that he did not grab Daly's flash or throw the flash. He says that when the male police officer grabbed his arm, the police officer showed Ortiz the flash which lay on the ground and told him to pick it up. The flash was about ten feet away at this point. He denies that a female police officer accompanied the male police officer and he stated that he first noticed the female police officer about ten or twelve feet from the cruiser car. Ortiz denies Capner's report of Capner having the flash in his hand when Capner went up to Ortiz. According to Ortiz Capner told him to pick the flash up off the ground, Ortiz said no, so Capner picked it up. After the male police officer picked up the flash Capner said that he wanted Ortiz to go to the cruiser car. The police officer did not say that Ortiz was under arrest. The first that Ortiz heard of an arrest was when he was in the cruiser car, away from the scene and all the way to Donald and Stafford in Winnipeg. His account continues as follows, that he asked the police officer for the reason for wanting Ortiz to go to the cruiser car and the police officer never gave any reason. The police officer took hold of Ortiz's right arm in his left hand and so they headed to the cruiser car. He maintained that he was not informed by police officers about the charge until the cruiser car in which he was seated had reached Pembina and Stafford. At that time he was told the charge would be theft under $200.00 and causing a disturbance.

Ortiz stated that he had come from a country where human rights are not respected. He had been imprisoned without a trial and without his family being informed of his whereabouts. He had spent five weeks in a torture camp and about a year in prison all totalled. He stated that his concern for having his photograph taken arose from his experience in Chile, his fear being that Chilean agents located in Canada would obtain the photograph and use it.

In cross-examination by his Counsel Ortiz stated that he did not know how Daly's flash got separated from the camera. He first saw the flash when the police showed it to him. Ortiz maintained that Daly had never said that he was with the press. He stated that his fear was that someone in the military in Canada would turn his photograph over to a secret agent of the Chilean government. He stated that he did not hear Daly say to the police that Daly wants Ortiz arrested.

In cross-examination by Counsel for the Police Association, Ortiz said that he was off work and on sick benefits on October 28th, 1983. He had been hurt while playing soccer. October 28th was the last day of his sick benefits. He also stated that he felt that Daly was singling him out while taking pictures of him.

In cross-examination by Counsel for the City of Winnipeg, Ortiz stated that he had pushed the camera aside with the palm of his hands. He had asked Daly who he was and told Daly that he shouldn't take a picture of him. That was the point when the police grabbed his arms.

The evidence of four other demonstrators is before the Commission, relating to the arrest of Ortiz. Jorge Barbaric, one of the demonstrators reported to the Commission Investigator that he saw that one male police officer had Ortiz by the shoulder on the grass area just to the north of the embassy. During the course of the walk to the cruiser car he reported the following:

> "I asked Gundher in Spanish what happened and he said the police were taking him because of a missing camera flash, but he knew the flash was already found by the photographer so he thought there was no point in taking him for robbery of the flash."

Dorothy Edna Wigmore reported to the Commission Investigator as follows:

> "Then one of those men whose name I learned later was Gundher, and who was one of the people later arrested, grabbed Daly by the jacket with his left hand and shook him gently. Gundher appeared

to be asking him who he was. I moved in closer and don't know exactly what precipitated it, but the next thing I recall Daly was leaping away from the wall pointing at something and shouting 'I want to press charges-I want to press charges.'...The next thing I saw were two policemen who had Gundher by the arms and were leading him away to the north and they passed between me and the building...more of the people moved down from in front of the Consulate to this area to see what was going on, and about this time a female police officer joined the other two."

Jim Silver reported to the Commission Investigator that

Once beyond the north wall of the Consulate, a scuffle ensued between one of the original demonstrators who attempted to seize a camera from the young photographer. The photographer yelled he was with the press, but produced no credentials. The photographer never lost his grip on the camera and Silver never did see a flash attachment on it. Silver never saw the demonstrator make any kind of throwing motion. He was always within 15 to 20 feet on this incident, never took his eyes off the event, and saw nothing that would give grounds for a charge of theft. The police then grabbed the man who had scuffled with the photographer and began to take him to a police car. The demonstrator involved in the scuffle was the same person taken to the police car parked in the middle of Bell Avenue.

Steven Ralph September reported to the Commission Investigator that

About halfway between the steps and the north end of the Consulate, September saw a scuffle occur between a person and a photographer where the person pulled two or three times at a camera strap over the photographer's shoulder. September says the person doing the tugging was not Gundher Ortiz who he knows, but another Chilean about 5'3" or 5'4" tall, 150 to 160 pounds, short and stocky, with light clothing on. After two or three tugs at the photographer's strap, there was a release and nothing else happened. September did not see any cameras or parts thereof removed during this exchange.

Allegations were made by police officers of two events having taken place en route to cruiser car 1612 after Mr. Ortiz was apprehended. These incidents amount to allegations against Dr. Robert Fisher Mahood and against Paula Fletcher.

Dealing with the Mahood allegation first, the accounts of Capner, MacCoy, Bolton and Constable Owens provide a description of the event from the point of view of police officers. Constable Capner gave evidence that a fellow with a ten speed bicyle approached as he, MacCoy and Ortiz were going toward cruiser car 1612. The fellow had raised the front wheel of the bicycle off the ground to block Capner's path. Capner was leading the group of three through the crowd. He had his right arm on Ortiz who was in the middle and MacCoy was behind. Capner advised Mahood to remove his bicycle and let the police through or he (Mahood) may be charged with obstruction. He said that the noise was so loud that he does not know if Mahood heard him. Mahood raised his bicycle on two occasions and struck Capner on the arm.

In cross-examination by Counsel for Ortiz, Capner maintained that Mahood deliberately tried to separate Ortiz from Capner. He did not arrest Mahood, stating that he can only do one thing at a time and that he was unable to communicate with MacCoy.

MacCoy reported that a male person on a bicycle kept bringing the bicycle up perpendicularly to block Capner and Ortiz's progress.

Constable Owens reported that he saw some guy come through with a bicycle with the front wheels raised. He was not sure whether the owner of the bicycle struck MacCoy with the bike or not, but said that if not, it was very close.

Bolton said that as the two police escorted the subject to their vehicle, they were blocked by an individual with a bicycle. The subject with the bicycle wore a coat or jacket of some sort with a hood. The person with the bicycle walked in front of the two police and held his bicycle there in what appeared to be a deliberate effort to stall the police and it appeared that he immediately engaged them in questions to slow up their progress. He was successful and within seconds a crowd began to form as the two police finally forcibly walked around the subject with the bicycle and proceeded to their car.

Ortiz' account of the event was different. He stated that just before he and Capner reached the sidewalk en route to cruiser car 1612 they came upon a person who had a bicycle. The person asked the police officer why they were taking Ortiz and was not given an answer. The person asked why not take me? (Mahood). It was after leaving the man with the bicycle that Ortiz claimed he saw the female police officer for the first time. When asked about the position of the man with the bicycle, Ortiz stated that the man with the bicycle was directly in front of Capner and himself. He did not recall the man raising the bicycle off the ground. It is possible, he allowed, that the bicycle was raised. He was unable to say one way or the other. The man with the bicycle did not move to let Capner and Ortiz through, as the path was blocked before Capner and Ortiz got there.

Mahood said that he was on the north side of the building ready to leave the Consulate grounds when he saw two police officers leading a man by the arm. He said that a woman who looked like the man's wife was crying. He had not noticed the police officers before this point in time. The police officers were walking towards the cruiser car. He approached the officers and the man whom they had arrested. He met them half way between the flag pole and the cruiser car. He asked the police officers why they had arrested the man. He informed them that they were running a risk of provoking a further disturbance. The demonstration was coming to an end and why don't they just let everybody go home. The male police officer led the man by the arm. Mahood said that he followed along beside them with his bicycle toward his person. He was not directly between the two police officers. He followed along beside them with his bicycle. His remarks were directed to both police officers. The female police officer asked Mahood why are you trying to protect this man? Does he have anything to hide? He said that he reiterated that rather than provoke further disburbance, they should let the man go. The police officers did not stop in their progress, just kept going. Their progress was slowed because of his conversation with them and because the man's wife was crying and holding on to the man's arm. When asked whether he came into contact with the police officer he said that he may have brushed sleeves.

In cross-examination by Ortiz' Counsel, Mahood stated that he did not obstruct the police with his bicycle. The police may have slowed down a bit.

In response to a question from Chairman of the Commission, Mahood denied any interference with the police by means of his bicycle. He denied the evidence of Bolton, MacCoy, Owens and Capner and in particular the allegation that he raised his bicycle wheel.

The second allegation made by police concerns an allegation involving Paula Fletcher. MacCoy reported to the Commission Investigator that at about the time that Mahood was raising his bicycle in a perpendicular position to block Capner and Ortiz' progress, Paula Fletcher was on MacCoy's side blocking her progress and yelling "do you always have to arrest brown people, you can't arrest white people, why are you taking him, you bitch, let him go, you bitch," and things like that.

Owens reported to the Commission Investigator that the prisoner's wife was hanging onto one of the Constable's arms saying "don't take him" and she was panicky and excited. Owens separated the woman from the Constable and while he was doing this, another female who he knows as Paula Fletcher came and was screaming "don't let them take him away".

Capner gave evidence that as he, MacCoy and Ortiz were headed toward the cruiser car a lady approached his partner and a discussion took place. The lady was angry. Capner didn't hear her comment but she was having a one sided conversation. The lady said, "why do you always have to arrest brown people? You should arrest white people-you bitch." He declared that it was Paula Fletcher, or that is what he was informed at District 6 police station later.

Paula Fletcher absolutely denies saying such words to MacCoy. She denies being near MacCoy as MacCoy, Capner and Ortiz were en route to the cruiser car. Her position is that she must have been on the steps in front of the Consulate when the event took place, if it took place at all. Dorothy Wigmore was in the area at the time, however, and informed the Commission Investigator that there were maybe 8 or more people on the grass area north of the Consulate, enough to surround the police and effectively stop or slow them. She was never more than 10 or 15 feet from Ortiz and the police from the initial incident until they arrived at the cruiser car. She knows Paula Fletcher and says Fletcher was not in the area at all, recalling only male persons around the police and Ortiz, other than herself. Wigmore also says she asked many times of the police officers, "why are you arresting him-he didn't do anything." and she says that it is possible that she may have used the term "brown people."

INCIDENTS AROUND CRUISER CAR 1612

This Commission has closely examined Exhibit Nos. 11(b) and 13(a) and notes the following: Paula Fletcher and Paul Graham can be seen leaving the platform in front of the U.S. Consulate by way of the north steps following Constable Rand who moves in a northerly direction along the front of the building. Constables Capner and MacCoy can be seen in the immediate vicinity of cruiser car 1612, with the rear door on the driver's side open, trying to convince Ortiz to get into the cruiser car. Ortiz appears to be talking to the police officers and is resisting getting into the car. His left hand is seen gripping the roof of the police car and his right hand is seen gripping the top of the rear door on the driver's side. It is evident that material such as leaves is being thrown in the direction of the cruiser car and on Exhibit 13(a) one is able to see and hear Constable MacCoy being struck on the left cheek with an object that appears to be a rock. Although she flinches upon being struck there is no other evidence of pain. The level of the noise from the crowd is quite high. Constable Rand is seen asking Constables Capner and MacCoy if they want Ortiz put into the cruiser car. Immediately thereafter Rand grabs Ortiz by the jacket, bends over, lifts Ortiz and places him into the rear seat of the cruiser car. At this moment the noise from the crowd increases dramatically and one can see the crowd surging towards the police car. During the whole of the preceding incident, Mrs. Ortiz can be seen in what can only be termed a hysterical condition. Paula

Fletcher can also be seen talking to various members of the crowd and to various police officers, in particular Sergeants Vokey and Nicholson. It is obvious that the police are largely outnumbered by the crowd and that the agitation of the crowd is escalating moment by moment.

Once Ortiz is seated in the cruiser car Constable Capner gets into the driver seat and Constable MacCoy goes around the car and sits in the front passenger seat. Fletcher is seen interacting again with police officers and at one point can be observed with her left arm raised in the air and her finger pointing towards the front of the car, and then her hand is held up as if to signal stopping motion. One can then hear Fletcher ask a police officer for the number of his car. People can then be seen sitting down both in front of and behind cruiser car 1612 with the obvious intention of blocking the movement of the car in either direction. Included in the crowd at the front of the car can be seen Dr. Robert Mahood, Mrs. Ortiz and the young child who we know to be Ortiz' son. Demonstrators were seated not only at the front but also the back of the car impeding its progress. The tape shows Sergeant Nicholson, while the people are seated, attempts to communicate with the crowd using the public address system on cruiser car 1612. The system did not work. Sergeant Nicholson can be heard clearly to be calling for the attention of the crowd in the vicinity of the police car. Despite that, however, not one member of the crowd appears to be interested in what Sergeant Nicholson has to say. Carl Ridd can be observed having what appears to be a conversation with Sergeant Vokey on the driver's side of the car. Before long Paula Fletcher who was seen at the passenger side of cruiser car 1612 saying to the crowd words to the following effect: "whose camera is he supposed to have taken?...If he'll pay for the flash, drop the charge. If you don't drop the charge, there is gonna be a lot of trouble here." Fletcher is shown pointing a finger at a person on top of the CKY cruiser car and to say "This is the guy that's causing the problem-right here. Let me tell you what happened." Almost immediately following Ms. Fletcher's speech to the crowd a group of people including Dr. Mahood, who had been seated at the front of the car stand up and commence to rock the car violently. At this point Ortiz' son can be seen participating in the rocking of the vehicle. Constable Hardy very quickly appears at the front of cruiser car 1612 utilizing a defender baton in what is commonly known as a figure 8 maneuver. As a result the persons who had been rocking the car stepped back to avoid being struck. Constable Hardy is observed to say "go on get back" as he utilizes the baton. His maneuver had the desired effect. At the same time as Constable Hardy made his move at the front of cruiser car 1612, one can hear clearly siren of the cruiser car being used. Included in the group of people who moved back is Ortiz' child who appears to be held in front of an adult male demonstrator. Immediately after the excitement of the crowd was hightened considerably. One observes Daly now off the roof of the CKY newscar standing alongside Paula Fletcher, between her and Constable MacCoy who is seated in the cruiser car. The camera then pans to the back of cruiser car 1612 which leads us into the Alvarez incident which will be dealt with later.

A number of witnesses were called who dealt with events in and about cruiser car 1612. The witnesses include representatives of the media, representatives of the demonstrators and of police officers. We now proceed to review the sworn evidence of seven witnesses on this point: for the media, Balagus and Dovey; for the police, Nicholson and Vokey; and for the demonstrators, Ortiz, Graham, Fletcher and Mahood.

Balagus said that on the north side of the Consulate he saw a crowd around a police car and two officers attempting to get a man into the car. He did not believe that the doors of the cruiser car were open. He said that the prisoner had his back against the car; that two police officers were right beside him and two others in front of the man, between him and the crowd. Balagus observed two of the police officers talking to the man, trying to get him into the car. At one point the car door was open and they tried to get him in. The demonstrators around the car were yelling "let him go." Balagus said that there was unrest in the crowd and that it was surging toward the car. He described police officers as forming a protective shield for Capner and MacCoy who were trying to place Ortiz into the car. Balagus observed leaves being thrown and someone banging on the cruiser car. He said that an officer hit the trunk of the car with his nightstick and he said that the blow was "struck blindly." Then Balagus observed a third police officer (who we know to be Rand) "heaving Ortiz into the back of the car." He said that Rand picked Ortiz up by the legs and the back. At this point Balagus testified that the noise level escalated. He said that Ortiz had not been resisting violently; that he was trying to talk to the police officers; that he would wedge himself when they tried to push him into the car. Balagus was positioned towards the trunk of the car within two feet of the trunk when Ortiz was, as he described it, heaved into the car. Immediately after Ortiz was placed in the car, according to Balagus, the noise level escalated into "a frenzied angry situation." Balagus said that initially he had sympathy for the police; that he remembered two things particularly: one being the confusion of the police; the other being a lack of organization and leadership. He described many of the police as looking frightened. He said that some of the officers seemed to get annoyed, especially if anyone touched the cruiser car. He said that there appeared to be no plan or co-ordinated effort as to how to handle the situation on the part of the police.

Balagus stated that after the prisoner was placed in the cruiser car there was activity on the side of the cruiser car. People were asking why the man had been arrested. People blocked the car at the front and back by sitting down. People were chanting "let him go." He said that he recognized Paul Graham, Paula Fletcher and Carl Ridd as persons who were located in the area. He described Paul Graham as talking to police officers. He said that there was some talking and some yelling. Graham wanted to know why the man had been arrested and were the police going with him. Paula Fletcher was also trying to determine the reason for the arrest. Balagus described her as going to the CKY newscar from which people were taking pictures. He said that Carl Ridd talked to the police beside the car and that Ridd was not yelling. He remarked that the situation at this point appeared to be under control. The police then began to try to move the police car. There was a great deal of activity at the rear of the car. He described people sitting and recalled a man in a purple shirt (who we believe to be Alvarez). Balagus did not recall anyone giving specific directions to the demonstrators, although he said that Mahood was encouraging people to sit down and that he (Balagus) believed that Paul Graham was telling people to sit down. In cross-examination by Counsel for the City of Winnipeg, Balagus said that no one was organizing the crowd to move in unison, but that the crowd was surging. The crowd was chanting "let him go." It did not seem to Balagus that anyone was organizing the chanting. He said that the chanting was very loud and noisy and that this made it difficult to hear. There were approximately eight to ten police officers around the cruiser car, according to Balagus, but when pressed he acknowledged that it could have been six, and that he sympathized with all six police officers. He said that people were banging and leaning on the car, but he did not see anyone kick a police officer. He described the demonstrators as being "noisy and angry" and that they moved extremely close to the line of the police. He said that people were darting out of the crowd. He saw no one sitting on the road prior to Ortiz being placed in the car. When Ortiz was put in the car, Balagus said that the crowd stopped chanting and that the chanting turned to screams. He saw Mrs. Ortiz screaming and noted that the situation became much more tense after Ortiz was put in the cruiser car. He said that people were told to sit down, the purpose being to prevent the police car from leaving. He said that he felt that the police should not have moved the car and further that the crowd "may have rocked the car" after Ortiz was placed in it. He acknowledged that he was not aware of the presence of Sergeant Nicholson and that he did not know that Bruce Vokey was a Sergeant. He said that he did not realize at the time that any effort had been made to use the loudhailer (the public address system on the cruiser car.) He was not aware of the use of communication equipment by the police to obtain assistance. He was not aware that there was a Sergeant at either end of the police car when Ortiz was placed in it. He said that after the people sat down, the police initially removed them from around the car. He described one police officer at the front of the car as doing a figure 8 with his baton. Balagus said that at various times during the occurrences around the car Paul Graham was trying to keep the demonstrators away from the cruiser car. He believed that Paula Fletcher also tried to control the situation, but said that she spent more time talking to the police.

In cross-examination by Counsel for the Winnipeg Police Association Balagus stated that he could not say that there was no control or organization on the part of the police. He said that the scene indicated to him a lack of organization and control. In cross-examination by David Deutscher, Balagus stated that although Graham was asking questions of the police, they did not respond.

In cross-examination by Ms. Fainman, Counsel for Ortiz, Balagus testified that he did not feel that the police should have released Ortiz. He said that there was a definite interconnection between the events.

Ian Dovey described police on Bell Avenue as trying to arrest a person. At the beginning he saw two officers. He said that a crowd gathered around the police car and that there was shouting by members of the crowd. He described other officers as gathering at the police car. Dovey took a point of vantage from the CKY newscar and from that vantage saw people throwing leaves and dirt at the police. He said that one officer came and forcefully put the man who we know to be Ortiz, into the cruiser car. This made the crowd angry. One lady was screaming and crying. The protesters then sat down, this being followed by the rocking of the car from both the front and the back. He said that the police dragged people away from the back. Mr. Dovey saw Paula Fletcher on Bell Avenue. He described her as "yelling and screaming", "he'll drop the charge." He said that when he put his microphone out, Fletcher said nothing. He said that he saw a police officer move to the front of the cruiser car with his defender baton; that the officer was wearing no hat and that he was swinging the baton; that the officer hit the front passenger side of the cruiser car with his baton.

Dovey expressed the view that the police should have communicated with the demonstrators and that subsequent events may have been avoided had they done so.

In cross-examination by Counsel for the City of Winnipeg Dovey said that the police officers who were attempting to get Ortiz into the cruiser car were calm despite Ortiz' resistance. The crowd was getting uptight and tense with the passage of time. He said that something had to be done in order to break the impasse and that one alternative was to get Ortiz into the police car and to get the police out of there.

Dovey said that he was not surprised in the actions of the crowd in rocking the police car. The rocking of the police car caused concern on Dovey's part for the safety of the car and its occupants. He acknowledged that he did not think that Constable Hardy hit the police car on purpose. He said that he believes that Paula Fletcher knew where the television cameras were and described her "as playing for the cameras." He said that Fletcher was where the action was. He did not recall anyone directing people to sit down.

According to Sergeant Vokey, after Parraguez escaped he (Vokey) moved toward the north side of the Consulate, from which he said he heard sounds of excitement. He witnessed the arrest of Ortiz and instructed Capner to proceed to get Ortiz into the police car. He said that the din from the crowd made it impossible to hear. He described the crowd as being aggressive and "shifting to mob." If people had remained calm, he said, the police could have dealt with the situation at the scene. Vokey said that Capner and MacCoy spoke to Ortiz for about five minutes and in an attempt to persuade Ortiz to get into the cruiser car. Ortiz was escorted to the cruiser car and the rear door was opened. Other police officers arrived and formed a ring around the door. At this point according to Vokey the control of the crowd was shifting to individuals other than the organizers and marshals and that Paul Graham was trying to regain control. He said that Paula Fletcher was inciting the crowd with the chant of "let him go." He quotes Fletcher as saying "they always pick on coloureds." He believed that she was using a portable horn or megaphone.

He said that there were two factions trying to gain control of the crowd. He said that while Capner and MacCoy were talking to Ortiz he (Vokey) moved up and down the perimeter and told the police officers to remain calm. Fletcher asked him why Ortiz had been arrested. Vokey says that he told Fletcher that there is an allegation of theft of a camera and that police officers had partially witnessed it. Fletcher then walked to a media car. He said that Fletcher began yelling that the complainant didn't want to proceed with the theft charge and that we (meaning the police) were taking the matter into our own hands. Vokey testified that he observed Constable Rand bend down and lift and push Ortiz into the car.

Once Ortiz was in the back of the police car Vokey says that he noticed Fletcher grabbing individuals and pointing and shoved the people in a direction of the front of the car, whereupon they sat down. At that point he said that Sergeant Nicholson attempted to use a public address system, but there was a loud feedback. Sergeant Nicholson attempted to advise the crowd of what was going on. He testified that Sergeant Nicholson was going to advise the crowd that they were obstructing and that they should cease and desist. It was decided to put three officers in front of the cruiser car to move people back and to put other men at the back. He said that there were five officers at the back of the police car and that they dragged demonstrators to the boulevard. He said that he himself moved a person by the name of James Willows. Another person who was moved by one other officer was named Alvarez.

In cross-examination by Counsel for the Winnipeg Police Association Vokey said that it is easy for an officer to call for assistance because all officers have communication equipment. He said that there were enough police officers until the problem started and it was then that calls for assistance were made. He said that at cruiser car 1612 Paul Graham was holding back demonstrators immediately behind him (Graham). People to Graham's right and left were surging at the police line and one demonstrator kicked out at the polica officers. Vokey told his men not to retaliate. Sergeant Vokey testified that Constable Owens suggested using the defender baton in front of the cruiser car. Because of the presence of small children Vokey was afraid of injuries to them so he did not authorize the use of the defender baton. He said he found it hard to believe that responsible people would have children in that situation. He testified that demonstrators were calling the police various names including "nazis" and "pigs" and that certain of the demonstrators were making kissing gestures towards the police. Vokey said that this is a sign commonly used by homosexuals. He said that the name calling would not cause him to respond. He testified that around the car material was being thrown including leaves, the occasional rock and bottles. He testified, however, that with respect to the rocks and bottles he had not personally witnessed this but had heard it from others. He had no idea who was doing the throwing but heard no one say that they should stop throwing materials. The crowd was surging and Vokey expressed the view that it was important to keep the police line in tact to protect Capner, MacCoy and the prisoner. He testified that Paula Fletcher came and asked him why Ortiz had been arrested. He said that he gave her full information and told her that Ortiz would probably be released on an appearance notice. Fletcher told him that if the crowd had the information, it might calm down. They went to the media car and addressed the demonstrators saying that the complainant did not wish to complain and that the police were doing this on their own. In Vokey's opinion this action on the part of Fletcher further incited the crowd.

In cross-examination by David Deutscher, Sergeant Vokey says that as he moved northward along the Consulate the noise level of the crowd dropped, but at the corner of the building the noise level increased despite the fact that the counter-demonstrators were no longer present. He said at this point that he saw Constables Capner and MacCoy 20 to 40 feet from the cruiser car. The Constables were situated on either side of Ortiz. He told the officers to get Ortiz to the car as the crowd was acting in a manner similar to that in which it had acted immediately upon and following his (Vokey's) arrest of Parraguez. Vokey says that when he first approached cruiser car 1612 there were no other officers, aside from Capner and MacCoy around the vehicle. He did not see Constable Rand nor was he able to tell us if Paula Fletcher was there. He subsequently told Capner and MacCoy to put Ortiz into the car thinking that the crowd might cease and desist and let the police do the necessary investigation. He also gave as a reason for this order that putting Ortiz in the car was for his own protection as well as that of Capner and MacCoy. He testified that Paul Graham was acting in a manner contrary to that in which Paula Fletcher was acting. He again said that Paula Fletcher was inciting the crowd. He agreed with Mr. Deutscher's suggestion that there is a big difference between bad judgment and incitement. He testified that it was Sergeant Nicholson's decision to have the police car moved. Vokey agreed with Mr. Deutscher's suggestion that if the said officer was waving his baton and saying "come on you fuckers" that would be unprofessional. He also acknowledged that if an officer challenged a demonstrator to a fight by saying "come on you bastards" that that would be unprofessional. He said that if an officer chased a person down the street after an assault, challenging that person to a fight, that this would be unprofessional, irrespective of whether or not the police officer had just been kicked by the person who he is chasing.

Sergeant Nicholson testified that he saw some action by the police car on Bell. He said that Capner and MacCoy had a prisoner right by the car. He also saw Rand and Vokey as well as Owens, that the back door of the car was open and the prisoner had his back to the door. Capner was advising the prisoner to get into the car. Capner told Nicholson that he had arrested the male for theft, he had grabbed a flash. Nicholson says that he removed Ortiz' hand from the door and that he himself told Ortiz to get in the car, whereupon Ortiz responded "why me?" At this point Nicholson turned to face the crowd, which he described as agitated. Members of the Winnipeg Police Department formed a semi-circle. He testified that Fletcher came up to him and said "they've dropped the charge, let him go." Nicholson said to Fletcher "take your people away and go down to District 6 and we'll talk about it there." The crowd to his left became more agitated. Someone threw leaves and someone kicked in Rand's direction. He then ordered Capner and MacCoy to get the prisoner into the car. Rand assisted in getting Ortiz into the car. Nicholson went on to say that when he first went to the cruiser car Capner had advised him that Ortiz had stolen a camera or flash. He testified that Capner did not say anything about the photographer saying that he wanted the man arrested. He did not remember Capner saying that he had witnessed the event. He could not tell us whether Rand or Fletcher had got to the cruiser car first. He testified that the person who kicked at Rand was a smaller male who immediately went back into the crowd. He first found out the name of the prisoner at District 6. He did not see Ortiz strike his head as he (Ortiz) was being placed into the cruiser car. He said that Capner and MacCoy got into the cruiser car in order to drive away. This he said was obvious to Paula Fletcher and she hollered at the crowd and motioned for the crowd to sit in front of the car. She yelled "sit in front of the car" more than once. She was to the left of and slightly in front of the cruiser car. He said that quite a few people sat down. He testified that the crowd was chanting "Let him go. Let him go" and "People united, will never be defeated." He said that he felt that it was appropriate to speak to the people using the intercom on the police car. He attempted to tell them that Ortiz was under arrest and was going to District 6 and that the crowd was to clear the road. He said that the crowd was getting louder and that there was feedback and he decided not to talk further. He said that he noticed very few people at the rear of the car. As the police car moved backwards he said that Paula Fletcher ran toward the back and told people to "sit behind the car." He said that while he was trying to communicate with the crowd he did not talk to Fletcher. He said that a number of people went onto the roadway and a few of them sat down. He said that the police started to move people out bodily, and that the car started to back up. He said that a male (who we know to be Alvarez), got down on the roadway and was trying to put his foot behind the wheel of the car. Sergeant Nicholson said that just as the cruiser car was backing up Paula Fletcher came back to him, faced him and said "you're number is 234-I am going to charge you with assault." He was at the rear corner of the driver's side of cruiser car 1612. He said that he put his hands up and said "go away" to Fletcher.

On cross-examination by Counsel for the Winnipeg Police Association Nicholson testified again about Paula Fletcher advising him at cruiser car 1612 that the charge had been dropped by the complainant and that the police should let Ortiz go. He said that he told her to take her people away and to go to District 6 and that they would talk there. He said that there was a small group which responded to her and that Paula Fletcher went into the crowd and that he (Nicholson) lost sight of her. The next time he saw Paula Fletcher she was urging people to sit down in front of the cruiser car. His next encounter with her was when she was urging people to sit behind the car. Shortly after she came up and spoke to him. He described her as being in control of her faculties but said that he felt that she was trying to encourage a physical or verbal reaction out of him by threatening to charge him with assault. After he held up his hands and told her to go away, she disappeared. Nicholson testified that when a person is taken into custody it is the responsibility of the officer or officers to make a satisfactory identification of that person. He said that it was necessary that a check be conducted with the bureau of police records. The officer he said must ensure that the person detained or arrested is not going to continue committing the offence or commit another offence. He said that a decision was made to remove Ortiz from the scene and that he (Nicholson) was responsible for making that decision. The situation was, according to Nicholson, that they had a man who had allegedly stolen a camera flash; that there had been a confrontation between Ortiz and the victim; that the crowd was angry and aggressive and that if Ortiz were released, he may have committed the offence again. Nicholson described the attack on Daly by Ortiz as "unprovoked." He said that the crowd was in such a mood that Ortiz' release could have caused further disturbances. Nicholson said that the formation of the police line around the cruiser car was spontaneous. He went on to say that when the person kicked out at Rand, Rand moved out of the line and was directed by Nicholson to get back into the line. He testified that after Ortiz was taken away that things settled down quickly.

On cross-examination by Counsel for the City of Winnipeg Nicholson said that he did not experience any stones being thrown at him. However he went on to say that he had never been subjected to a situation like that at the U.S. Consulate and described it as being the worst situation he had ever been in, causing him the most apprehension that he had ever had for his own safety.

On cross-examination by David Deutscher Nicholson testified that his first communication with Paula Fletcher was when Ortiz was at the police car. He said again that he did not see Ortiz' head strike the car as he was being put into the car, since he (Nicholson) was looking at the crowd at the time. Nicholson testified that he felt responsible for the police who were present, since he was the senior officer there. He said that because of the aggressive nature of the crowd and the aggressive act by Ortiz toward Daly he made a decision that Ortiz should not be released on an appearance notice. He testified that this decision did not result from a lack of communication. The crowd wanted Ortiz released but Nicholson did not believe that the crowd would be appeased by his release because of the mood the crowd was in. He felt that because of the crowd's mood it might have had a sense of victory if Ortiz were released and that the crowd would continue what Nicholson described as "the rampage" and perhaps assault the U.S. Consulate. Nicholson said that he was worried about the peace being kept. He said that the crowd was not prepared to leave until Ortiz was released. Nicholson felt that the police should have been able to move on to Donald Street. His experience has been that resistance has been passive when the police have moved people who were sitting in. He testified that he did not believe that the crowd's demanding the release of a prisoner justified that release. He said that if he reasonably felt that the disturbance would not have continued or that there would not be damage he would have considered Ortiz' release. He acknowledged that it might be wise to seek out the leaders of the demonstration to discuss the situation. He described Fletcher as exhibiting a leadership role and admitted that she was close to the area and that she had spoken to him. He said that he had previously spoken to her with a suggestion, but that she was loud and vociferous. He said that sha was the instigator in getting people to sit down. He said that he hoped that Fletcher would follow his suggestion but that she did not reply. No demonstrator other than Fletcher had come up to Nicholson. Nicholson interprets photograph 96 of Exhibit 12 as depicting Paula Fletcher directing people to sit down behind cruiser car ı612.

Capner stated that at one time Vokey came up to him and instructed him to get Ortiz into the car. He did not ask about events leading up to the arrest. Somewhat later at the station Vokey asked about events leading up to the arrest. Capner and MacCoy got Ortiz to the cruiser car. The rear door was opened. Several police officers formed a semi-circle, including Rand and Nicholson. It took about one minute to get Ortiz into the back of the car. Capner asked Ortiz to have a seat in the back of the cruiser car. Ortiz just stood and looked at him. Capner felt that Ortiz was causing the crowd to react. He asked why he had to get into the cruiser car to talk about what had happened. Capner testified that he did not tell Ortiz to get into the cruiser car because he was under arrest because it would have aggravated the situation. Capner told him that he was the cause of the people acting the way they were. Nicholson told Capner and MacCoy to get Ortiz out of there. This was while Capner and MacCoy had Ortiz standing outside the vehicle. After Capner and MacCoy got into the vehicle, Capner being the driver, he tried to move the vehicle but said it was physically impossible to do so because people had surrounded the vehicle, pounding and kicking the car and sitting down in front of and behind it. He said that police were moving people out from behind the car. He testified that Nicholson came and requested the use of the public address system on the car. Nicholson made two attempts to talk through the public address system but the crowd got louder. Capner inched his way back following hand signals of Nicholson. MacCoy had told Capner that Daly was up on a trailer beside the cruiser car. He said that MacCoy got word to Daly to come to District 6 police station. He said that Paula Fletcher came up to the passenger window and said something to MacCoy. He saw MacCoy trying to get Hardy's attention. Fletcher put her arms through the window, up to her elbow. He did not hear Fletcher's comments to MacCoy but later they were related to him by MacCoy. The comment made by Fletcher to MacCoy as related by MacCoy to Capner was that Fletcher called MacCoy "a fucking bitch." He testified that he saw MacCoy roll up the window. He testified that the cruiser car was bounced up and down by the demonstrators just before the car was moved backward. He saw Daly come up to the side of the car, but did not hear any conversation between him and MacCoy. Constable MacCoy told Capner that she had told Daly to come to District 6 but she was not sure if Daly had heard her or not.

In cross-examination by Counsel for the Winnipeg Police Association Capner stated that as the car was being bounced up and down the bottom of the car hit the road. He said that the demonstrators might roll the car; that he was kind of worried as something might happen. In cross-examination by Ms. Fainman Capner stated that

Fletcher's arm was definitely inside the car. He was quite clear that he saw the arm inside the car. Capner stated that after Ortiz was placed in the car Ortiz sat very quietly, saying nothing; that Ortiz did not ask about the reason for his arrest. Capner denied Ms. Fainman's suggestion that Ortiz was not charged and cautioned until the cruiser car reached the intersection of Stafford and Pembina Highway. He said that in answer to a suggestion by Ms. Fainman that the crowd members were crying and pleading, Capner asserted that they were in fact yelling and screaming.

MacCoy reported to the Commission Investigator as follows:

> "On arrival at cruiser car 1612, MacCoy unlocked the door and Constable Capner opened the back door of the car. Ortiz was asked to get in the back of the car but he just stood there and really didn't say anything, and if he did, the police could not hear him. MacCoy thinks they might have tried to convince Ortiz into the car for 20 seconds or so, and finally Constable Rand helped to put Ortiz into the car.
>
> Cst. Capner got in the driver's seat and MacCoy walked around the car and got into the passenger's side, front seat. They immediately rolled the windows up and locked the doors so no one could get in. Cst. Capner attempted to back up to Donald but couldn't because somebody was yelling, 'Sit in front of the car, sit behind the car' and people did that. People were kicking at the car, smashing the windows and jumping on the trunk. They also rocked the car and Sgt. Nicholson tried to talk to the crowd a couple of times on the loud hailer but it was no use because when he picked up the mike, the crowd got louder. The crowd was saying, 'Let him go, let him go'. MacCoy saw their complainant (Daly) on a trailer alongside their car and wanted to get his attention to go to District 6. Cst. Hardy was on her side of the car and she was yelling at him to tell Daly to go to District 6. Hardy didn't seem to hear her and finally MacCoy hollered the message to Daly herself and he seemed to understand. MacCoy had

> unrolled the window to holler at Daly and that is when Paula Fletcher suddenly appeared. Fletcher put one of her arms through the window and was trying to smack MacCoy but the window was rolled down only about one-third of the way so Fletcher couldn't actually hit MacCoy. While trying to smack MacCoy, Fletcher kept saying, 'Why don't you let him go, you're a fucking bitch, why don't you let him go' and stuff like that. MacCoy watched both forward and backward from inside the car trying to assist her partner in getting out, but saw no other arrests."

Constable Rand was still on the front steps of the U.S. Consulate when his attention was drawn to events on Bell Avenue. Rand reported to the Commission Investigator as follows:

> "Cst. Rand was still on the front steps of the U.S. Consulate when his attention was drawn to the north where a cruiser car had arrived on Bell Avenue and many of the crowd began moving in that direction. He felt if there was trouble at that end, his assistance may be required and he went to the north at a fast walk. He did not know Paula Fletcher on October 28th, 1983 but does know her now. He does not recall Paula Fletcher anywhere near or around him during his walk to Bell Avenue and he saw no other altercations during that walk. On his arrival, Constables MacCoy and Capner had a male person in custody at the rear door on the driver's side of cruiser car 1612, which was open. He was unable to speak to them, and at least Cst. Owens and Sgt. Nicholson were also present. The crowd was pushing and shoving towards the car so Cst. Rand assisted in keeping them back. He did this for about ten minutes and during this period of time, saw a person who he later arrested and whose last name is Alvarez, throwing a combination of leaves and mud from the gutter in their direction. Cst. Rand was about six feet away and rushed at Alvarez. Mr. Alvarez stepped backwards and tripped on something, possibly the curb, and fell on his rear end so there was no physical contact between he and Cst. Rand at that point. People were shoving, pushing, screaming, yelling, and wanting to know why Ortiz was being arrested. Cst. Rand responded to a few, saying he didn't know why he had been arrested and also denies making other insulting remarks to the crowd which have been attributed to him. It did not

> appear to Cst. Rand that Ortiz was going to get into the car, the crowd was just getting worse, and that things had gone on long enough. He asked Cst. Capner if the guy was under arrest and if he wanted him in the car. Capner said yes, so Cst. Rand got a hold of Ortiz and started yanking on him, trying to get him down. Ortiz was holding onto the top of the rear driver's side door and Rand was unable to push him down and into the car so he bent down, pulled Ortiz's legs out, wrapped his arms around Ortiz's legs and as Ortiz came down, Rand pushed him into the car. He did not frisk Ortiz before putting him in the car, and used only as much force as was needed. Cst. Rand made the decision on his own to assist in putting Ortiz in the car. Cst. Rand had no conversation with Ortiz whatsoever. Constables MacCoy and Capner got into the car then and Cst. Rand went to the front when the crowd began to sit down there and at the back of the car. Cst. Rand has no recollection of Paula Fletcher's actions or movement around cruiser car 1612."

Michael Bennett testified that when he went to the north side of the Consulate he sought out a vantage point by climbing onto the roof of the newscar. He described two police officers with a Chilean (who we know to be Ortiz) at the driver's side rear door of the cruiser car. He said that Ortiz was quite terrified; that members of his family who were around were also terrified; that he was resisting with all his force. He described Paula Fletcher's arrival and said that she was acting in a very excited manner, yelling loudly. The prisoner made efforts to resist being placed in the cruiser car bracing his legs. Bennett testified that on top of the newscar with him was a CKND cameraman and a young photographer (who we know to be Daly.) He said that Paula Fletcher yelled and pointed in the general direction of him and Daly saying "there he is - that's the one who started it all, he's to blame." She was very close to the driver's side rear door of the cruiser car. Bennett testified that he was very scared. At first Bennett thought Fletcher was pointing at him, then he was relieved to see that she was not pointing at him. He said that he told Daly that he (Daly) should leave. Bennett said that he himself was terrified; that he was afraid that the crowd might turn on Daly. He said that Daly was scared and that his face was white.

Bennett testified that while he did not hear Fletcher saying anything to the police officer nor did he racall any conversation between Fletcher and the police officer about Ortiz, she seemed aghast that the police were arresting a Chilean. He described Fletcher as being very excited and yelling things loudly at the police and also at the crowd. Bennett's next recollection was of the crowd sitting in front of and behind the cruiser car. He said that be believes that someone was organizing them to sit in front and behind the car. He described several of the demonstrators rocking the car.

Bennett said that his most vivid recollection is of the police officer with the nightstick behaving in an extremely irrational manner forcing the crowd away from the cruiser car. He described the police officer's behavior as being "extremely irrational and dangerous." That police officer was at the driver's rear door. He said that he cannot recall physical contact by the nightstick with any person, but describes the nightstick as coming so close on a number of occasions. He said that the police officer swore at the crowd telling them to "come and get me fuckers." He went on to describe another incident involving an officer who we believe to be the same, swinging his nightstick in a violent manner. He said that the officer hit the front of the cruiser car with the baton. He said that the crowd was seated on the ground and that a child of approximately seven years was narrowly missed being struck on the forehead. He said that in his opinion the police officer did not see the child. The child was being held by a man and both were sitting being in "pow-wow style." He said that the man did nothing to shield the child and described the officer as "borderline hysterical" and his conduct as "street fight conduct." On being shown Exhibit 13(a) from 4:30 to 4:37 Bennett recalled seeing the events depicted but said that the officer shown was not the same as the officer described by Bennett at the driver's side rear door of the car. He also testified that it was his recollection that when Hardy was utilizing the defender baton in the figure 8 maneuver the crowd was seated.

In cross-examination by David Deutscher Bennett said that at the rear door of the cruiser car the police were shouting at the Ortiz, who was resisting, doing their best to force him into the cruiser car. He said that the scene grew in intensity and that shortly thereafter a number of other police officers circled the driver side of the cruiser car. He said that he recalls a number of demonstrators forming an outer ring between the crowd and the police. He saw Fletcher only after he got up on the newscruiser. When Ortiz was placed in the cruiser he said that the emotional level of the crowd was raised and that demonstrators were shouting. He said that he did not believe that people sat down spontaneously. Bennett did not recall Fletcher having a conversation with Daly while Daly was on top of the newscruiser. He did not recall Fletcher asking Daly to drop the charges, although he did not dispute that the question was asked. He said that the conduct of the police officer with the baton at the front of the cruiser car could be described as "extremely irrational; borderline hysteria."

In cross-examination by Counsel for the City of Winnipeg Bennett maintained that several events are imprinted in his mind: firstly, the club missing a child by several inches; secondly, Paula Fletcher's finger pointing in his general direction and his thinking that Paula was talking about him, directing the crowd's attention to him.

Mahood testified that he was by the rear door of the cruiser car. He asked at that point why the police were arresting Ortiz and advised the police that they would be better off letting him go. He said that he got no response. He testified that he took part in rocking the cruiser car sometime after the sit-in commenced. He does not recollect how many others were rocking the car but said that it was perhaps two or three. He acknowledged that Ortiz and the two police officers were in the car at the time. He said that the rocking of the car lasted a few seconds and that the car was rocked just a little bit, no more than three or four times.

He testified that demonstrators sat down after Ortiz was in the cruiser car. It crossed his mind that the police might try to leave. He said that he "sat in" at the front because he was closest to the front. He felt that an injustice had been done and that a "sit-in" was a non violent form of protest. He thought that the crowd did not want the police to leave with the prisoner. The prime objective of the sit-in was to display a useful form of protest. He acknowledged that the rocking of the cruiser car was ill considered and a futile gesture and he said that he regretted doing it. His regret however was based on what happened subsequently. He said that the car was rocked because of the sudden flurry of activity at the rear of the car. He said that he had a real concern for violence and potential injuries to the demonstrators at the rear of the car and that he hoped to divert attention from the rear of the car. He said that he observed a police officer at the front of the cruiser car (who we know to be Hardy) with a baton. He said that as the demonstrators rocked the cruiser car, Hardy moved in with his baton and swung it wildly in all directions causing rapid retreat by the demonstrators. He said that no one had instructed him to sit down in front of the car. He saw Paula Fletcher talking to a photographer (who we know to be Daly.) He tapped the police officer (who we know to be Rand) on the leg during the sit-in and said to him "why don't you let him go?" He acknowledged that there was some hostility directed toward the photographer (Daly) on the CKY newscar. Commission Counsel reminded Mahood of his statement to the Commission Investigator in describing the feelings of the crowd toward Daly as being "a great deal of hostility."

When apprised by Chairman of the Commission of the evidence of Michael Bennett that Daly appeared terrified; that Bennett had told Daly to leave because he (Bennett) was scared that the crowd would turn on Daly; that Daly's face was white, Mahood responded by suggesting that Daly was afraid of attention from the police because of his involvement at the beginning and that the crowd was directing the attention of the police to Daly.

In cross-examination by David Deutscher, Mahood said that the purpose of the sit-in was to attempt to get the man in the cruiser car (Ortiz) released. He said that if the police had let Ortiz go he believed that the demonstrators would have dispersed and gone home.

In cross-examination by Counsel for the Winnipeg Police Association Mahood said that he followed the police to the rear door of the cruiser car for the purpose of securing release of the prisoner and to raise some objections. He said that the sit-in commenced because of the injustice done to the demonstrators. He said that the demonstration had been interrupted and no one arrested except for a demonstrator. He again expressed his regret at having rocked the car but said that his regret was that the action did not result in the desired release of Ortiz. He did not consider that the rocking could harm someone. He said that the rocking could not harm physically people in the car but acknowledged that the people might become fearful. He said that he bore no malevolence to the police at the time that the rocking occurred but that the feelings of the people in the car never entered his mind.

Ortiz deposed that he asked Capner and MacCoy the reason for his arrest. They told him to get into the cruiser car. He said that he let them know that he knows his rights and that they had to give him a reason for the arrest. He said that to both police officers but there was no response. The male police officer was described by Ortiz as trying to force him into the cruiser car. The female police officer was trying to remove Ortiz' right hand from the door. Ortiz believed that the police had no right to get him into the car. He said that the male police officer (who we know to be Capner) did not tell him verbally that he wanted him to go to the car as a result of what had happened. At the police car Ortiz described another police officer who asked if there was trouble. That other police officer (Rand) pushed the other two officers aside and grabbed Ortiz by the jacket and tried to push him. When he was unable to do so he grabbed Ortiz' legs. Ortiz says that this was not an attempt to search him. He said that the officer was very violent and that he (Ortiz) hit his head twice as he was being placed into the car. While he was in the back of the car Ortiz saw Fletcher talking to the photographer (Daly). Fletcher then turned around and talked to the female police officer who was seated in the passenger seat. With respect to Fletcher, Ortiz said "she said the guy was dropping the charges so there was no reason to take me." The female police officer did not respond. She started to roll up the window. Fletcher was kind of leaning on the window when the conversation ended. Fletcher did not put her hand inside the car. Ortiz went on to say that he did not hear anyone say to one of the police officers in the car "you fucking bitch." He testified that at one point he saw MacCoy pointing at Daly and he believes that MacCoy spoke to an officer outside the cruiser car, telling him that someone could take hold of Daly. While Ortiz saw demonstrators sitting in front of the car he denied seeing anyone directing them to sit. He described people yelling and banging on the trunk of the car as it was being backed up.

In cross-examination by Counsel for the Police Association, Ortiz said that he absolutely refused to get into the car unless and until a reason was given for him to do so. He said that if police officers had said that he was under arrest for theft under $200.00, he would have got into the car. He said that he got no answers to any of his questions. He was absolutely certain that Paula Fletcher never put her hand in the cruiser car.

Paul Graham testified that he had a conversation with Paula Fletcher and it was decided to talk to the police to establish communication. He said that he wanted to head off a potential disorder. He said that he spoke to three or four police officers in rapid succession and that he saw Fletcher talking to police officers. He asked why the person is being held. He learned that the basis for the arrest was a disagreement with a photographer and he decided to find the photographer. He said that the people were yelling and the police officers were getting jittery. He described a police officer as "charging out from the car as if to strike people" and he told the officer to behave; that all the people wanted was information. He said that he felt that he had to separate the police from the demonstrators because he was afraid of potential police violence. He said that the police were swinging clubs at people in the crowd. He said that there were six to eight police but he did not see how the blows landed. He formed the impression that people were being struck. He was unable to provide names of the people who were swung at by the police.

He said that the swinging of batons by police officers occurred after Ortiz was placed in the car and that he hollered a lot when he saw the swinging. Graham testified that he observed demonstrators sitting both in front of and behind the cruiser car but that he did not tell them to do this, in fact he said that he heard no one giving instructions. He said that Fletcher told him that the photographer had agreed to drop the charges and that it was necessary to locate the photographer for the purpose of having him tell the police that he would drop the charge. He said that the demonstrators did not want to physically intimidate the police. He said that after several attempts at communicating with the police had failed he simply gave up trying to talk to them. He asserted that he was concerned that physical harm might come to Ortiz at the hands of the police. Asked to explain the reason for his concern the best that Graham could say was that having seen Alvarez (not Ortiz) the day following the demonstration he had reason to believe that Alvarez had been severely beaten.

In cross-examination by his own lawyer Graham stated that in his view Paula Fletcher had acted in a dignified manner under the circumstances. It was his assumption that Fletcher was shouting so that the police could hear her. He said that in one instance police tried to block his photographing people who were in the cruiser car in custody. He said that one police officer was provocative in that the officer wanted him to do something so that the officer could arrest him. In answer to questions by Counsel for the Chilean Association he said that it would have been appropriate to have one of the demonstrators accompany Ortiz in the police car and that he would have been willing to do so. He said that he saw people rocking the cruiser car and that this started after people became frustrated at the very violent behavior on the part of the police.

In cross-examination by Counsel for the City of Winnipeg Graham stated that the police were attempting to disperse the crowd by using violence. He said that the police were inciting the crowd by reacting in a violent manner. He said that the police do not treat demonstrators gently. In cross-examination by Counsel for the Winnipeg Police Association Graham acknowledged that he had no complaints about police conduct at other demonstrations. He hastened to say, however, that the police have an anti-left wing bias. He said that the police got jittery but admitted that anyone would be jittery in a scene such as that at the U.S. Consulate.

Paula Fletcher testified that she was informed that there was an arrest of a Chilean taking place on Bell Avenue. She received this information from Dr. Linda Murray. She walked to the area of the cruiser car and saw Ortiz, who she knew personally. He was at the back door on the driver's side. There were two or three police officers near Ortiz and 30 to 50 other people in the vicinity of the cruiser car. She said that she did nothing to incite the crowd. She tried to find out why Ortiz was being arrested and she says that she told people to stay calm. Upon arriving at the cruiser car Fletcher asked other demonstrators if they knew what was happening. She then spoke to a couple of police officers asking why Ortiz had been arrested. She noted Mrs. Ortiz crying at the back of the cruiser car. Steve September told her that Mrs. Ortiz wanted to go with her husband because she was worried. Fletcher tried to speak to a police officer to tell him that "this is not a normal situation. This woman is from Chile." She said there was no response to her entreaties. She said that she then moved back and chanted the slogan that the crowd was already chanting "The people united shall never be defeated." She said that she may have done that three times. She then went to speak to police officers again to ascertain what is happening and who was in charge of the police. She eventually found out who was in charge. She says that she had a conversation about the nature of the charges. She said that she sought out that person and requested that the charges be dropped. She said that she spoke to the officer in charge and was informed that Gundher is charged with theft of a camera or camera parts. She says that she said to the officer "that's not very serious. Can you let him go?" The officer replied "Someone pressed charges against Gundher." She then spoke to the crowd to provide the crowd with information with the purpose of calming things down. She spoke to a woman police officer in the cruiser car and informed her that Daly is dropping the charges. The officer did not speak to Fletcher but simply rolled up the window. At this point they were trying to back up the police car.

Commission Counsel then went into a detailed review of Fletcher's activities. She did not know the names of the demonstrators to whom she spoke at the cruiser car. She saw Dorothy Wigmore somewhere in the vicinity. None of the demonstrators to whom she spoke knew what was happening. She spoke to Paul Graham who did not know what was happening. It was decided that they should find out what was going on. She said that Dr. Murray had not advised her of the reason for Ortiz' arrest. Fletcher was absolutely certain that she did not know the reason for the arrest when she approached the cruiser car. She says that in her conversation with Graham she also conversed about keeping the crowd calm. She at no time sent for Susan White because she (Fletcher) was a marshal and felt that she could talk to the police. She got no response from police officers when she asked them what the charge was. She got no response when she asked a couple of police officers what the charge was and why Ortiz was being taken. She did not tell the officers that she was a marshal. She felt that the police should have told her what the charge was saying that it would have been good judgment for them to do so. She regretted not informing the officers that she is a marshal. She said that there was a police officer at the back of the cruiser car upon whom she tried to impress that the situation that he was dealing with was not normal. She did not ask that officer what the charge was. She told the officer that the people were from Chile and that they were afraid and that she (Mrs. Ortiz) was worried. She identified this officer as Vokey. She said that Vokey did not respond. She did not identify herself to him. She said that she then moved back from that position and chanted a slogan that the crowd was chanting "The people united will never be defeated." She asserted that she did not lead that chant. She said that she asked herself "why am I chanting this slogan?" She said that she then told the crowd to stay calm and that they would find out what happened. Fletcher said that Vokey told her that Ortiz had been charged with theft of a camera or camera parts. She told him that it was not serious and asked him if he could let Ortiz go. He said that someone had pressed charges against Gundher. She did not recall

Vokey saying that Ortiz would likely be released on an appearance notice. Fletcher said that Wigmore came up to her and asked her if she knew what was happening. She told Wigmore that it was for a theft of a camera. Wigmore told Fletcher that she (Wigmore) knew who had pressed the charges. At this point Ortiz was in the cruiser car. Wigmore had seen an incident between Ortiz and someone and must have assumed who pressed the charges, according to Fletcher. Wigmore pointed out to Fletcher a young man standing on top of the newscruiser. The man was wearing a jean outfit (Daly). Fletcher says that she waved up to the car to get Daly's attention and asked him if he had been the one to put charges against Gundher. Fletcher said that people may have been sitting in front of the cruiser car when she went to see Daly. Fletcher said that she did not direct people to sit down in front of the cruiser car. She never encouraged anybody to sit down in front of the cruiser car, nor did she run to the back of the cruiser car and tell people to sit down. She denied the evidence of Sergeant Vokey in this regard. She denied that she spoke to Sergeant Nicholson, saying that "they have dropped the charges, let him go." She cannot confirm or deny that she asked "please let him go." She does not believe that Sergeant Nicholson told her "Take your people away and go to District 6 and we'll talk there."

With respect to Daly Fletcher says that she went over to where the fellow was standing on the car and tried to get his attention by calling up to him. She remembers asking him if he is the individual who had put charges on Gundher. He said yes. Fletcher asked him if he would drop the charges and he said that he did not want to. She asked him again and said that the charges had created a lot of trouble and it would be good if he dropped them. He said that the part of the camera that had been taken was expensive. Fletcher told him "we'll compensate you for the equipment-will you drop the charges?" Daly advised her that he would drop the charges based on compensation. Fletcher said that she then turned to the crowd to indicate what Daly had told her for the purpose of calming the crowd. She says that she told the crowd that Daly had dropped the charges. At this point she heard a roar from the direction of the rear of the cruiser car and noted people getting up and starting to move in that direction. She saw a police officer in the car and the window of the car was down. She went to tell the police officer (MacCoy) that the charges would be dropped and asked if Gundher Ortiz would be free to go. She got no response from the officer. The police officer rolled up the window. Fletcher then moved to the back of the police car where she believed there was another cruiser car. She said that she could not see very much but something was taking place involving the police. With respect to Daly Fletcher asserted that she had no feelings of hostility toward him. Fletcher said that when directed to Exhibit 13(a) at approximately four minutes, Fletcher said that the person who said he thought you were with those marines may have been her voice or that of Dorothy Wigmore. If it was her voice she said, the source of the information was Wigmore. Fletcher said that she told Patty Sullivan to give Daly the money. She said that she was on the passenger side of the cruiser car and that Patty Sullivan was standing somewhere very close to her. Fletcher said that Sullivan had told her that she had $80.00 or more.

Sullivan came up to Wigmore and Fletcher. Fletcher had no money. Fletcher told Sullivan about the situation and Sullivan said that she had money. Wigmore was involved in this discussion. Fletcher was unable to provide an account as to why she shouted "Give him the money." She said that it was a confusing time and that there was a lot of noise. Daly disappeared shortly after this. Fletcher could not explain why Daly left but asserted that he "reneged on the deal." When Fletcher spoke to MacCoy, who was seated in the cruiser car, Fletcher says the window on the passenger side was open. She recalled telling MacCoy that Daly was going to drop the charges and that Ortiz could be let go. Fletcher said that she was not thinking clearly in not going to Sergeant Vokey to tell him of Daly's dropping the charges. Fletcher said that she did not believe that she swore at MacCoy, however she would not confirm or deny that fact. When it was suggested to Fletcher that her actions had incited the crowd she responded by saying that the police had incited the crowd. Fletcher asserted that at no time did she put her face up against the window of the cruiser car and that at no time did any part of her body pass through the open window of the cruiser car. She specifically stated that she did not put her arm into the car through the open window and denied that she tried to hit MacCoy. She said "I categorically deny hitting MacCoy." She said that MacCoy rolled up the window as her (Fletcher's) arm was on the window and that she (Fletcher) pulled her arm away. Fletcher said that she related nothing to Ortiz. She did not recall saying anything to him about a lawyer. She believed that she yelled to Ortiz as the cruiser car pulled onto Donald Street "don't worry-we'll get you a lawyer." She denied telling Sergeant Nicholson that she is going to charge him with assault and categorically denied his evidence that she was attempting to provoke him by taunting him. She recalled asking Capner to provide her with the number of the cruiser car. She denied the allegation that she had directed people to sit down in front or behind of the cruiser car.

Activity shown on the part of Fletcher on Exhibit 13(a) at 2:26 which had been interpreted by police witnesses as Fletcher's signalling the crowd to sit down, were explained by Fletcher as being actions by her to try to calm the crowd.

In cross-examination by her Counsel, Fletcher said that she was moved by the crying of Mrs. Ortiz and felt that the police officers were treating Mrs. Ortiz in an insensitive way. She asserted that the police behavior added to Mrs. Ortiz' distress. She said that she believed that a complainant could drop charges and was not aware on October 28th that it was up to the Crown. She did not tell the crowd about Ortiz' arrest, but rather went looking for Daly. She again stated that she never intended to incite the crowd against Daly and said that the crowd was not incited against Daly. She could think of no reason why she would want to incite the crowd to engage in violence against the police and to create violence.

In cross-examination by David Deutscher, Fletcher repeated her statement that she did not intend to incite the crowd to take action against Daly, but rather her motive was to calm things.

In cross-examination by Counsel for the City of Winnipeg, Fletcher denied that she was trying to get Ortiz released then and there. When her attention was directed to Exhibit 13(a) on 2:26 to 2:32 Fletcher said that she did not point her finger at Vokey. She said that she was demonstrable with her hands, particularly when agitated. Fletcher said that Daly had already agreed to drop the charges when she told the crowd "This is the guy that's causing the problem." She maintained that all she wanted to do in using those words was to inform the crowd of a fact that Daly had placed charges on Ortiz and to make certain that the crowd wouldn't focus its attention entirely on the police. Now, she maintained, there would be a chance to alleviate the problem. Fletcher admitted that her objective was to have Ortiz out of the car as soon as possible and back on the street. When it was suggested by Counsel for the City that Fletcher had used forceful language she said she could not recall what words had been used. Fletcher said that after she spoke to MacCoy, MacCoy responded to her in a manner that left her (Fletcher) still frustrated. Fletcher said that she believed that MacCoy might understand - that she might have more compassion - that she might have seen Mrs. Ortiz and understood. When MacCoy did not respond, it was a terrible let down to Fletcher. One of Fletcher's final statements in cross-examination by Counsel for the City of Winnipeg was that the demonstration was not held for the benefit of the media.

THREE INCIDENTS INVOLVING A DEMONSTRATOR IN A PURPLE SHIRT

During the course of the inquiry, evidence has been adduced of interaction between Jorge Alvarez and The City of Winnipeg police officers on three different occasions.

The first Alvarez incident took place prior to Gundher Ortiz being placed in cruiser car 1612. It is shown in Exhibit 11B at about 12:50 where we see Alvarez in the presence of Constables Owen and Rand. We do not see the events leading up to the interaction, but we do see Alvarez falling back on to the pavement of Bell Avenue. Alvarez has no recollection of the incident. Rand's account is as follows:

> "On his arrival (at cruiser car 1612), Constables MacCoy and Capner had a male person in custody at the rear door on the driver side of cruiser car 1612, which was open. He was unable to speak to them, and at least Constable Owens and Sergeant Nicholson were also present. The crowd was pushing and shoving towards the car so Constable Rand assisted in keeping them back. He did this for about ten minutes and during this period of time, saw a person who he later arrested and whose last name is Alvarez, throwing a combination of leaves and mud from the gutter in their direction. Constable Rand was about six feet away and rushed at Alvarez. Mr. Alvarez stepped backwards and tripped on something, possibly the curb, and fell on his rear end so there was no physical contact between he and Constable Rand at that point."

The second incident took place directly behind cruiser car 1612 as the cruiser car started to back up in order to move onto Donald Street, so that Capner and MacCoy could take Ortiz to District 6 Police Station. The event took place as demonstrators were sitting behind the cruiser car and police officers were picking them up and moving them to the side of the road out of the path of cruiser car 1612.

The principal witness to the event was Dr. Carl Ridd who reported to the Commission's Investigator as follows:

> "I was going to unlock (my bike) and go home on it. Before I went, i wanted to find the policemen who had moved in so effectively on those steps and congratulate them for a job well done. At this point, I saw lying in the street behind this police car, cruiser car 1612, my friend Jorge Alvarez. This is a young man I've come to know through Central America work which I have done with him. It's a man I regard very very highly. He's among other things a television producer and I've done a television show with him on the public network and so there he is lying in the middle of the street and there are three or four policemen around him, striking at him with their fists and with their night sticks, and reaching down and trying to pull him up. Meanwhile, he's lying in the street there on his back and he's sort of fending them off with his legs or with his hands. He's not wanting to rise up. And I saw this happening. I was three feet away from it when I caught sight of who it was lying there. I said, Jorge. I moved in between the police and him and the police on one side of him because there were police on the other side of him as well, hitting away and reaching for him. And I moved in between the police on the one side and himself, and I said to the police, looking at them, and said a bit fiercely probably, let him go, I can get him up, and I did indeed. I reached down and I grasped him by the arm and he saw me and, standing over him, and he reached up for me and we grasped arms and I, like you would on a basketball court or something when someone's fallen on the football field, and I pulled him to his feet. And I said what's happening? And he made a response to me - I don't remember just what it was he was saying, but we exchanged a few words there and I expect fully that the police were now going to move in on him or tell me and him together what they wanted him for because it had been apparent to me that they wanted him for some purpose, I thought. Because otherwise why are they trying to pull him to his feet or striking at him, doing both in fact. But the police had melted away. They didn't want him. There were gone about some other business, whatever it was. There were lots of places they could be used and they had gone off to some other

> quarter now that I had come in as an interloper and had got this man to his feet and was engaged with him. They were gone and after a word or two, really only a word or two, seeing them gone and nothing more needed of him and he was on his feet and alright. I said, well look I'm going to go and try and stop some of these other things. And I did."

Parts of the event are shown in Exhibit 12, photographs 99 to 108. Photos 99 to 102 show Paul Graham in a location in which he probably saw the event, however, he has no recollection of it.

The video tape, Exhibit 11(b) shows the following:

"17:46:05 Paul Graham followed closely by Dr. Carl Ridd are seen moving quickly from the south side to the rear of cruiser car 1612.

17:46:20 Cst. Rand can be seen in the upper right hand screen engaging and then grappling with Alvarez at the rear of cruiser car 1612. Alvarez is on his back with his arms and legs moving to evade Cst. Rand, and it is a one-on-one confrontation with no other policemen close by.

17:47:27 Paul Graham now standing directly west of Rand and Alvarez. Wayne Glowacki is seen between the camera and Rand and Alvarez, and is taking pictures of them.

17:49:24 Camera has panned to the north and returns to Alvarez-Rand action.

17:50:28 Sgt. Vokey is shown pulling Jorge Barbaric off to the north curb between two cars.

17:51:20 Cst. Hardy bends down and grabs Nestor Molinas who is sitting north of Alvarez. Cst. Rand's head can be seen as he stands up, and Alvarez can also been seen still lying on the ground on his back. Alvarez and Rand are directly in front of Paul Graham, and another police officer (possibly Fennell) is about four to six feet south of Rand. He has his right arm raised sort of holding Dr. Ridd back at this point.

17:52:17 Alvarez can now be seen trying to sit up. Cst. Hardy is pulling Molinas away to the north between the two cars. Cst. Butcher is evident at the eastern perimeter of the crowd.

18:01:06 Sgt. Vokey and Cst. Hardy (in that order) return to vicinity of Alvarez.

18:03:05 Cst. Hardy is now directly in front of Alvarez as Dr. Ridd assists Alvarez to his feet, with Paul Graham very close and looking on. Cst. Rand is south of Dr. Ridd and Sgt. Vokey is behind Cst. Hardy. Boris Salazar is standing immediately east of Alvarez.

18:08:10 Dr. Ridd has Alvarez by the hand as Alvarez takes two or three steps backwards to the north. The police congregate south of them around Paul Graham who is talking to Cst. Rand, and Sgt. Nicholson has Paul Graham by the right arm.

18:10:08 Sgt. Nicholson pushes Paul Graham into the crowd as Dr. Ridd pats Alvarez on his left shoulder and leaves him turning to the south."

Information about the incident was obtained by the Commission Investigator from demonstrator witnesses:

Hugo Alphonso Torres reported as follows:

"The other thing I saw was Jorge Alvarez on the ground near the corner surrounded by 4 or 5 policemen, and at least two of the policemen were kicking Jorge. I saw some Canadians trying to help him, and one guy reached his hand down and managed to get Jorge on his feet."

Michele Anne Pujol reported as follows:

"Suddenly a group of police came around the south side of the car towards us and none of them said clear the road. They rushed there and started grabbing people to remove them. I was one of the first, and two of them grabbed me under the arms, dragged me to the south curb, and dropped me there. After that I stood up and went back to approximately the same spot, and tried to sit down again. At that time I saw two policemen pulling Jorge by the arms. He was laying down on his back and they were pulling on his outstretched arms. These two policemen were quite tall and I would recognize at least one of them again. They were positioned in such a way that they were pulling him towards the north curb where there was really no room for them to take him."

Jorge Enrique Alvarez reported to the Commission Investigator:

> "Jorge Alvarez was walking behind cruiser car 1612 after Ortiz had been put inside and was hollering, 'Let him go' with the rest of the crowd. A policeman hit Felix Munoz, who was standing on his left, in the stomach with a stick. They were not sitting down behind the car yet. The policeman was going to hit Munoz a second time when Alvarez grabbed the policeman's stick. At that time Alvarez was punched in the mouth and knocked to the ground. He feels he was knocked out because he found himself on the ground, and had to shake his head. As he was getting up, Carl Ridd came in and pulled him up and moved him away from the police. Alvarez was shown photos 107 and 108 of Exhibit 12 and thinks that shows the occasion when Dr. Carl Ridd assisted him. He also pointed out Cst. Hardy in both photos as the policeman that he thinks hit him."

Felix Edjerdo Munoz does not confirm Mr. Alvarez's account. He reported as follows:

> "To the best of his recollection the first time he saw Alvarez at the demonstration was when the police had Alvarez on the ground handcuffing him, and Alvarez's head was nearly under a car. He cannot remember Jorge Alvarez ever being alongside of him. Munoz says he was never hit, punched, or jabbed with a stick by any policeman, although a policeman did push him back at one time using his baton in a horizontal manner. He was read Alvarez's account of this incident and replied, 'No, I don't remember that.'"

Constable Rand on interview reported the following to the Commission Investigator:

> "Cst. Rand went from the front of cruiser car 1612 on the rear to start moving bodies sitting at the rear so the car could get out. Cst. Hardy went to get one male person, and Cst. Rand saw Alvarez sitting at the back of the car so he went to move Alvarez. Alvarez laid down on his back and Cst. Rand tried but was unable to pull him out of the way. He would try and grab Alvarez and Alvarez would move his arms so Cst. Rand could not get a hold of him. No other policeman assisted Cst. Rand at that time and he never struck Alvarez during this encounter. Finally Cst. Rand abandoned the attempt to move Alvarez until more police arrived."

Finally, we have Cst. Hardy's report as follows:

> "Cst. Hardy was at the rear of cruiser car 1612 and removed four or five demonstrators from the path of the car. He recalls Sgt. Vokey and Cst. Rand being there but does not recall Cst. Rand struggling or tussling with any of the demonstrators. Cst. Hardy was shown photographs 99 to 102 and photos 107 and 108 but cannot recall these events or their circumstances. He makes no mention of Alvarez in his statement at all."

The third confrontation which took place between Mr. Alvarez and police officers took place after Dr. Ridd helped Alvarez to his feet behind cruiser car 1612. It took place as cruiser car 1612 backed up close to cruiser car 1662 which was parked by the curb of Bell past Donald Street. During the event cruiser car 1662 was stationary and cruiser car 1612 was backing up. All witnesses say that at the point that the two cruiser cars were alongside one another, 1612 was between three and four feet to the south of 1662. Five witnesses gave viva voce evidence of the event at the inquiry. Fifteen witnesses gave their account to the Commission Investigator. These witnesses are comprised of representatives of the media, demonstrators and police officers. In addition, Exhibits 13(a), 11(c) and 21, photographs 1 to 8 pertain to the event.

Michael Balagus informed the Commission that after cruiser car 1612 started to back up, he noticed a man lying on the street with his head under one of the cruiser cars and his legs under the other cruiser car. He was lying face down. Two police officers were holding him down. A third police officer was striking the prisoner with a nightstick. Balagus walked towards the event but was stopped by a police officer and was told not to push on. The person who Balagus observed was clearly Mr. Alvarez. The police officers were likely

Rand, Butcher and Delaney. Before we continue with the description of the event, however, we digress to review the evidence as to what event led to the arrest of Alvarez.

When questioned about the reason for the arrest, Rand stated that he was standing on the south side of cruiser car 1662. He was facing north when he felt his hat being grabbed off his head. He looked ninety degrees to his right and saw Jorge Alvarez standing about five feet away to the east. He saw Alvarez with his (Rand's) hat in his hand and saw him (Alvarez) throw it into the air in a southeasterly direction towards the intersectin of Donald and Bell. The crowd was behind Alvarez, so Rand took a couple of quick steps and grabbed a hold of Alvarez.

Alvarez denies taking Rand's forage hat. He reported to the Commission Investigator that the incident started as follows. After being assisted to his feet by Dr. Ridd, Alvarez joined others sitting at the rear of cruiser car 1612 and was about to sit near Gabriel Daza. He was being watched by a tall blond policeman who he identifies as being Rand. As Alvarez was bending down, Rand came over to Alvarez and jumped on him. Rand grabbed him. Alvarez stood and backed up in an attempt to try and get away but Rand held onto him from the left side. More reference to this account will be made later.

Photographs 1 and 2 of Exhibit 21 were taken at the outset of altercation between Rand and Alvarez. Unfortunately, the quality of the print is poor. These photographs form part of a series of photographs which were taken by a Winnipeg Free Press photographer. The roll of film was dropped by the photographer at the demonstration and picked up by Regina Bueno. The 137 photographs which comprise Exhibit 12, taken by the same photographer, are all of the highest quality and have materially assisted this Commission in carrying out its function. The 33 photographs which comprise Exhibit 21 are of lesser quality, due solely to the manner in which the film was developed. As stated this film was dropped by the photographer at the demonstration and picked up by Regina Bueno. She had it developed and impeded the work of the Commission Investigator by contriving a story that she had destroyed the negative of a set of poor quality prints which she had provided to the Commission Investigator. Bueno reported to this Commission at a pre-hearing conference March 15th that she had destroyed the negatives. The facts were different, however, because on May 28, 1984 Ms. Fainman produced the negatives under subpoena. It later turned out that the negatives had been turned over to Ms. Fainman by Graham, who in turn had received them from Bueno. The upshot of Bueno's actions is however, that we have a photograph of an important event, the quality of which photograph is poor, which if properly handled may have resolved for the Commission the answer to which of Rand and Alvarez was giving a correct account of the start of the event now under consideration. Blow-ups of photographs 1 and 2 of Exhibit 21 are attached as Schedule "F". If the item which is located near the hands of Rand and Alvarez is a policeman's hat, plainly, Rand's account of the event is incorrect, because according to Rand, the hat was removed and thrown away before the struggle began. If the item is something other than a policeman's hat, Rand's account may be correct. The quality of the print, which we are informed cannot be improved on, leaves the matter in doubt. Unfortunately, no other witness noticed or can speak about the event which led to the altercation been Rand and Alvarez.

Returning to Balagus' account of the Rand/Alvarez altercation, Balagus stated that two police officers were holding Alvarez down. A third police officer was striking him in a downward motion with a nightstick. Balagus was at this point standing behind cruiser car 1612. He saw two or three blows struck. The person who struck the blows had his back to Balagus but Balagus is certain that it was a police officer. Balagus stated that as the man was struck, he (Alvarez) yelled in pain each time. Prior to the first blow being struck, the man was lying on the ground, restrained by two police officers. Balagus said that Alvarez, "was going nowhere". He was under complete control. The two police were squatting or kneeling beside him. Both were restraining the upper part of Alvarez' body. He identified Rand as one of the police officers who was holding Alvarez down. The police officer who struck the blows was standing and was bent over. Balagus rejected any suggestion that the blows were struck to subdue Alvarez. He rejected any suggestion that the blows were struck to move Alvarez' legs. He maintained that the blows were struck in a vertical position, from up to down. During the event, Balagus said that he moved two or thrae steps toward where the man was lying, when another officer stopped him and said to go back. He said that he went to inform his photographer to get a shot of this activity and he returned with the photographer. When he returned, Alvarez was being raised to his feet and soon after that was placed into cruiser car 1662.

In cross-examination by counsel for the City of Winnipeg, Balagus stated that Alvarez was lying on the road with his head to the north and his feet to the south. He stated that he was unware of what efforts had been made to move Alvarez from behind cruiser car 1612 before the incident in question. Initially he noticed two police officers dealing with Alvarez, then a third police officer was standing right there and that officer hit Alvarez with the nightstick. He said that Alvarez was face down when he first observed Alvarez. He would say that Alvarez was not struggling. Alvarez' legs were under the car. If the car had backed up, it would have run over his legs. He believes that the police had Alvarez adequately restrained. Balagus was six to eight feet away. Sometimes his view was unobstructed and at other times it was obstructed. On occasion, Alvarez thrust his feet under the police car. The police had a responsibility to move his legs. Balagus seemed to recall that after the blow was struck, the police officer who struck it, sat on Alvarez. The blows which he had described in examination-in-chief, were blows to the back of the leg in the area of the calf or knee. He was unable to describe the nightstick.

In cross-examination by counsel for the Winnipeg Police Association, he stated that activity at the back of cruiser car 1662 drew his attention to the location. Alvarez was being held down by two officers. One was Cst. Rand. He maintained that Alvarez was under control at the time. He said that a third police officer could have held up his hands to stop the cruiser car from backing up and that nobody was guiding the cruiser car as it was backing up. Balagus stated that two police officers lifted Alvarez off the road quite easily. He believed that they could have lifted him earlier. He said that when he moved toward Alvarez, a police officer told him, "get the fuck away".

A second media witness who observed part of the event was Wayne Glowacki, a photographer with the Winnipeg Free Press. It was his roll of film which had been found by Regina Bueno (Exhibit 21). When shown photograph 10, which portrays Alvarez on his feet in the company of two police officers, he stated that the police officer without the hat (Rand) was punching the demonstrator in the back with rapid punches. Another police officer obstructed Glowacki from taking more photographs. He described the situation in which he moved from place to place, obstructed each time by a police officer. He stated that he observed a police officer on the right holding Alvarez while Rand was hitting him.

In answer to questions by counsel for the City of Winnipeg, Glowacki was unable to recollect what had happened before the police officer and Alvarez became involved in the situation which he saw. He stated that he can recall nothing other than what is shown in the photograph except for the police officer, who he clearly recollected had punched Alvarez. He maintained that the police officer who blocked his view said, "its getting dangerous, you'll have to move back". He said that he identified himself to the police officer as being from the Free Press. The police officer said, O.K., but the police officer continued to move as Glowacki moved, thus obstructing Glowacki's view.

Twelve demonstrator witnesses reported on the event. Of them, two, namely David Edward Hall and Michele Anne Pujol may have had the clearest view of the event, having regard to their positions in the video tape and photographs which comprise Exhibit 21. David Hall reported to the Commission Investigator that he saw two police officers holding Alvarez on the ground beside a cruiser car, and attempting to handcuff his hands behind his back. Alvarez was squirming but was effectively pinned by the two burly policemen. At the same time he saw, "a third police officer repeatedly ramming the end of his club into the stomach-groin area of the man on the ground who was in a fetal position". Hall screamed for at T.V. camera crew to come and record the incident and screamed at the police to stop the officer who was inflicting the beating. He said that a moment later, two officers on top of Alvarez, picked him up and pushed him into the cruiser car.

On close questioning, Hall said that the policeman rammed his club into Alvarez at least three times, but maybe as many as seven or eight. The event occurred just south of a cruiser car parked at the north curb of Bell Avenue just off Donald Street. He described the officer as having a rather thin face, his coloring was more distinctive--a reddish brown color hair with complexion to match. From his description of the Willows event (which we set out later), it is clear that Hall was describing Delaney as the officer who he saw strike Alvarez in the manner just described.

Pujol described the event in this way.

"I was only two or three behind the centre of the car (which we know to be cruiser car 1612) when I noticed something happening on the ground to the right backside of the car. I must have gone closer and looked over the side of the car because I saw Jorge Alvarez was being held down to the ground by two police and they were later joined by a third officer. This was in a very small space between the police car and a car parked at the curb on the north side - I would say approximately four feet wide. Jorge was being held face down by one officer who had his right arm in an arm lock behind his back, and pushing Jorge's shoulders and head down into the asphalt. He was not being gentle and seemed to rub or attempt to rub Jorge's face into the ground. The other officer was crouching by the right rear tire of the car and attempting to put the handcuffs on. He had black hair, fairly thin, while the one with the arm lock was bigger with blond, wavy hair and a moustache.

The officer was having a hard time putting on the handcuffs - they kept slipping away. Then the blond officer pinned Jorge down with his knee by putting it right in the middle of his back. I remember thinking that must have hurt because he was pushing with all his weight on his back....

Then the third officer was there crounched by Jorge's legs and he proceeded to beat Jorge on the back of his calves and upper part of the leg, and on the lower part of the back with his truncheon. Sometimes he would hit him on the side of the legs as Jorge twisted around. This beating with the truncheon was continuous for 20 or 30 seconds while I watched, and it was an intensive beating as well. I would not recognize the policeman who was beating Jorge because I could only see his back. I quit watching then because it was making me sick and I found it extremely violent, so I backed up and walked a few steps away into the crowd on the street behind the police car. The crowd was hollering for the police to stop and there was a lot of emotion over this incident.

Two policemen then brought Jorge down the street to the police car near me. He was handcuffed and they were pulling him along, one on each side, and they threw him in the left rear door of the

> car onto the back seat in such a manner that he landed on his face. I was in a position to see this through the rear window of the car. I don't know which policemen they were."

Some of the other demonstrator versions are as follows: Dr. Cy Gonick reported to the Commission Investigator on an event which appears to be the arrest of Alvarez. He noticed pushing and shoving behind cruiser car 1612 and moved to the back of the car. He saw two or three policemen holding a man down on the road and another one, "smashing him with his club in the legs, stomach and groin". He did not recall how the demonstrator was positioned. He stated that a bunch of people tried to get through to the prisoner but were pushed back by police. He believes that he was within five yards of the action.

David Gordon Hardy reported to the Commission Investigator as follows:

> "I am not sure of the sequence of events, but I recall 2 or 3 policemen holding one man on the ground near the left rear tire and swinging down at him with their clubs, and I believe kicking him as well. After a couple of minutes or longer they finally got the guy up and into the rear seat of the car. I can't describe the guy or his clothing at all".

Boris Vladimir Salazar reported that he saw police officers come to try to take Alvarez from behind the cruiser car. Alvarez resisted being taken away from there like everybody else.

> "It was a non-violent kind of resistance only because the people would move to avoid being grabbed and taken away. When Alvarez resisted being moved the police hit him with their sticks and kicked him with their feet. He was hit and kicked several times before he was handcuffed and put in the car".

Jorge Salazar gave evidence on the event viva voce. Salazar stated that he had moved to the back of cruiser car 1612. He stated that Alvarez was face down and he was beaten by three or four police officers. He said that he is "very sure that Rand was one of those police officers". "He was beating with his fists". Salazar stated that Rand struck Alvarez three or four times in the back. Salazar was seven metres away when this happened. He stated that one police officer was using a nightstick on Alvarez. Police officers were hitting Alvarez in the back. He said that Alvarez was kicked in the legs. When shown Exhibit 21, photograph 19, Salazar identified Cst. Butcher as the police officer who had hit Alvarez with the nightstick. When shown photograph 22 of Exhibit 21, he identified Cst. Delaney as a police officer who was very rough with Alvarez. He stated that Alvarez was kicked in the sides of his legs from the thigh to just below the knee. He said that the police car was being backed up close to Alvarez' foot. People were shouting and banging on the police car. The police saw this but did nothing. He said that Rand put Alvarez inside the police car in the same way as he had put Gundher Ortiz inside the police car. Rand pushed him inside the car.

When questioned by counsel for Alvarez, Salazar stated that he got mad when he saw Rand punching Alvarez in the back.

In cross-examination by counsel for the City of Winnipeg Salazar stated that there were six hands beating Alvarez. Anybody could see that the police were beating Jorge. There was always somebody in the way. During the entire incident, Alvarez was face down. He remembered that Alvarez' leg were under the wheels of the car. He thinks he saw police officers put handcuffs on Alvarez.

Dorothy Edna Wigmore reported to the Commission Investigator that she saw two police officers, one with sandy blond hair, holding a man with a purple shirt (who we know to be Alvarez) down on the ground by the left rear wheel of the other police car. The man was face down with his arms being held behind his back by either one or both policemen. They appeared to be hitting the man on the ground and I think one of the policemen had one of those batons. They seemed to be hitting him somewhere on the back or legs and he was in obvious pain and moaning. There was at least one policeman standing between me and them. As Gundher's car started backing up, it looked like it would hit the man in the purple shirt so I shouted "watch out - you're going to run over him." They continued backing up onto Donald Street and them went south.

Gabriel Robinson Daza reported to the Commission Investigator that he sat down behind cruiser car 1612 because other demonstrators were doing so and he remembers that Alvarez sat down along side him to his left. A policeman came over and told them to leave, but they continued to sit. He is confused about events which followed but remembers one police officer taking hold of Alvarez "and it seems he put Alvarez up close to a car. That was not Cst. Rand since he arrived later when Alvarez was being held against the car by three policemen. Daza thought the police wanted to put Alvarez inside the car or handcuff him. Daza said that he was just behind the car when Rand went in between the other three police and started to pull Alvarez. He said, "Rand turned Alvarez with lots of force and Daza thinks that is when Alvarez fell to the ground. He saw Rand hit Alvarez two or three times on the ground but heard Alvarez scream several times. Daza thinks Alvarez was struck with a fist from the way he was screaming. He thinks Alvarez was struck once in the stomach from the way he crawled up and turned from one side to the other. He saw Alvarez hit three or four times with night sticks in the area of his left knee and recalls Alvarez saying, "Don't hit me on my leg." Daza remembered then that Alvarez had two operations on that leg. The last thing Daza saw before his own arrest was a policeman putting a stick across Alvarez' legs and pulling up one leg like he wanted to put him inside the car.

Steven Ralph September reported to the Commission Investigator that he saw portions of Alvarez' arrest from a position approximately three or four meters east of the action.

> "He first saw Alvarez and a policeman in a standing struggle before the policeman tripped Alvarez and dropped him to the ground. In a matter of three or four seconds, two more policemen assisted the first policeman, although September cannot identify any of the police officers. Alvarez fell on his back with his head under the left side of a car with his legs to the south. One policeman was bent over Alvarez and struck him on the legs with a baton a minimum of two times. The same policeman poked or jabbed Alvarez in the torso or stomach area at least twice while Alvarez was on his back. He also saw the policeman who originally struggled with Alvarez standing over him trying to grab and turn Alvarez on his stomach, but did not see that policeman hit Alvarez at all. September cannot identify the policeman involved because he started calling a camera crew over to come and take pictures of the event. He moved out of the way to let them in just about the time Alvarez was being handcuffed behind his back while laying on his stomach. He later saw Alvarez when he had been raised to his feet."

The last account of a demonstrator which we touch on is that of Alvarez himself. A summary of his interview with the Commission Investigator is as follows:

> "After being assisted by Dr. Carl Ridd, Alvarez joined others sitting at the rear of cruiser car 1612 and was about to sit near Gabriel Daza. He was being watched by a tall blond policeman who he identifies at Cst. Rand. As he was bending down, Rand came over him and jumped on him. Rand grabbed him as shown in photos 96 to 101 of Exhibit 12. The policeman did not talk to him at all. Alvarez stood and backed up in an attempt to try and get away but Rand held onto him from the left side. He was then given a 'shot' in his right side - a punch or kick, but can't be sure from who or what he was hit with. Alvarez kept bending himself over, and the policeman's hat fell over him on Alvarez' right side. He pulled from side to side from Cst. Rand while another policeman pulled him another way. Alvarez got another 'shot' on the left side which made him bend over again. They were still standing at this point and two more policemen were now involved who Alvarez identifies as Sgt. Vokey and Cst. Hardy in photographs 96 to 108 Alvarez denies ever having had his hand on Cst. Rand's hat, but remembers it falling off on his right side as he struggled with Rand. Alvarez received a third 'shot' to the neck which hurt and made him weak just before falling to the ground. He does not know who struck him or what with, but his legs were out of control on the ground. He was held face down by Cst. Rand and was given several punches and kicks on his sides and back. He recalls being struck once in the small of the back with a sharp stick. At that time he had his face to the right and switched his head to look to the left to see who was hitting him but couldn't. He feels he was kicked more than six times in the middle body region and was hit a total of 16 to 20 times on his legs and back side of his body while held on the ground. At one point he was pulled by the hair and recalls somebody pulling his left leg up with a night stick. He was struck in the testicles with what he believes was a night stick but doesn't know who did it. This caused him pain and he screamed 'Okay, I give up. Don't hit me anymore.'
>
> Shortly after that he was handcuffed behind his

> back, raised to his feet and was finally put into a police car after minimal resistance. His testicles, back, and neck continued to hurt him while in the car and he was eventually taken to the Public Safety Building."

The above account appears to point the finger at Rand, Delaney and Butcher as persons who may have used excessive force in dealing with Alvarez, in the event that the arrest was proper. Two police witnesses, Sgt. Vokey and Nicholson saw part of the event and gave viva voce evidence at the inquiry about the matter. In addition, interviews by the Commission Investigator of Csts. Rand, Butcher, Harris and Delaney threw some light on the matter.

Vokey deposed that as the rear bumper of cruiser car 1612 was at the wheelwell of cruiser car 1662 he observed an event involving Delaney, Rand and Alvarez. Vokey was at the passenger side rear bumper of 1612. People were yelling "look he's hitting him on the leg. Get a camera" and "He's hitting him with a stick". Vokey looked and saw Alvarez on three or four occasions put his legs in the path of cruiser car 1612 as it was backing up. He said that he saw Delaney use a defender baton to move Alvarez' legs. Vokey walked over and placed his foot so that Alvarez could not block the car from backing up. He stated that Rand and Delaney got Alvarez handcuffed and raised him to his feet who was placed in the rear of cruiser car 1662. Vokey also stated it was possible that Rand had his knee in Alvarez' back. That is an established technique to trip someone on the ground.

Vokey acknowledged his statement to the Commission Investigator that when he first saw Alvarez, Alvarez was on the ground. He had not seen Alvarez in a prior confrontation with Rand. When informed by Commission counsel that Delaney himself had acknowledged hitting Alvarez with one blow, Vokey said that he did not see the blow, but it must have been that blow which caused the crowd to react and led to Vokey viewing part of the matter.

In answer to question by his own counsel, Vokey stated that Alvarez was favoring his left leg. Vokey told Rand to ask Alvarez if he required medical attention. Vokey was informed that Alvarez had said that he was limping as a result of a prior accident in Flin Flon and that he had been on compensation for two years.

Sgt. Nicholson gave viva voce evidence about the event. He said that he observed a male down on the roadway, trying to put his foot behind the wheel of cruiser car 1612. It was Alvarez. Vokey and Delaney had hold of Alvarez when Nicholson first observed Alvarez. The two cruiser cars were along side one another, but not exactly so. He was just behind the rear fender on the driver side of 1612. Alvarez was on the ground. Delaney and Vokey were more or less on top of him. The police were struggling to get Alvarez' hands behind his back. Alvarez' foot was behind the wheel. Delaney was using his baton to get his foot back. Then the car was backed onto Donald. It was Delaney who was using the baton. It was a defender baton. Delaney was holding the butt end and using the handle to pull Alvarez' left back. He used the baton three or four times. He hooked the handle around the calf of Alvarez' leg.

In answer to questions put by counsel for the Winnipeg Police Association Nicholson stated that he saw the arrest of Alvarez. He didn't see how it began or how it ended. He did not see anyone strike

Alvarez with a baton. He heard no complaints from Alvarez. He was close enough to hear a complaint, if there was one.

In answer to questions put by Mr. Deutscher, Nicholson stated that Alvarez was deliberately putting his leg behind the wheel. Alvarez was on his stomach. Alvarez was deliberately moving his leg. He believed from that that he was attempting to impede the progress of the police car. He cannot disagree with the suggestion that Alvarez might have moved the leg in order to make it more comfortable and the pain less. He has had a injured knee and knows that sometimes the pain can be alleviated by extending the leg.

Cst. Butcher was not able to assist the Commission Investigator about the incident. He had a recollection of being involved in two incidents in which police officers put prisoners into police cars and had difficulty in differentiating one incident from the other.

Cst. Allen James Harris informed the Commission Investigator that he was at the rear of cruiser car 1612 at it reversed towards Donald Street. His back was to the cruiser car and people were shouting "watch his legs" or something like "he's under the car". He says that he (Harris) looked down and somebody was lying on the ground with the back of his legs fairly close to the left rear tire of cruiser car 1612, which was backing up. He stated that he banged on the car to stop it and believes that two police officers picked up the person. He does not recall how the person's legs were moved away from the cruiser car. He does not know what eventually happened to that person.

The following is a summary of Delaney's interview with the Commission Investigator:

> "On arrival Constable Delaney saw Constable Rand struggling with a gentleman on the ground behind cruiser car 1612 who was trying to get away. It appeared Constable Rand was not making any headway with the situation so Constable Delaney used his issue tonfa stick (defender baton) and hit the person on the ground once. Constable Delaney is not sure which leg he struck, but hit him on the shin between the kneecap and the ankle, at which time gentleman (Alvarez) slowed down what he was doing and Constable Delaney then sat on his legs flipping him over onto his stomach so he could not kick anymore. Constable Delaney straddled Alvarez, grabbing him by the waist area and turning him over with Alvarez' stomach to the ground to facilitate getting his hands behind his back to handcuff him. Alvarez was not flailing his arms and feet so much and Constable Delaney had his legs controlled so Constable Rand used Constable Delaney's handcuffs to handcuff Alvarez behind his back. Constable Delaney used a long side of the baton to strike Alvarez' leg, and struck him only one blow. Constable Delaney did not see Constable Rand put his knee in the middle of Mr. Alvarez' back, and did not see Constable Rand strike Alvarez at any time. Constable Delaney did not see anyone kick Alvarez and he and Constable Rand were the only peace officers who dealt with Alvarez on the ground to his recollection. Alvarez was raised to his feet after being handcuffed and Constable Rand put him in the rear of cruiser car 1662, possibly with assistance from other nearby peace officers.

Another police officer present at the time of the arrest of Alvarez was Sergeant Fennell. Exhibit 13A 4:50 shows Fennell to be present at the time of Alvarez' arrest, however he was unable to see or recall anything about the event.

We have before us as well the account of Rand as given in an interview by the Commission Investigator. We earlier set out his account of the reason for his apprehension of Alvarez. Continuing his account:

> "He saw Alvarez with his hat in his hand and saw him throw it into the air in a south easterly direction towards the intersection of Donald and Bell. The crowd was behind Alvarez so Rand took a couple of quick steps and grabbed a hold of Alvarez. He tried to wrestle Alvarez down to bring him back to the car and thinks he told Alvarez he was under arrest at that time, but not for any particular reason. They didn't wrestle long before they landed on the ground on the south side of the car. Cst. Delaney came to his assistance once they were on the ground. Alvarez was on his back kicking up at Cst. Rand while Cst. Rand was trying to get on top of Alvarez to hold him down. Cst. Rand is unsure whether Alvarez succeeded in kicking him but does recall a lot of arm movement in trying to gain control of Alvarez. He did not punch, hit, slap, or kick Alvarez at any time.
>
> While Cst. Rand tried to gain control of Alvarez, he continued to kick. Cst. Delaney then hit Alvarez on the legs maybe a couple of times with his defender baton and Rand heard Alvarez scream in pain twice. Cst. Rand knew Delaney was hitting Alvarez on the leg from seeing the movement of his swing, but did not see where the blows landed. At the time Alvarez' head was to the west, Rand was facing west, and Delaney was beside Rand on his left, or to the south.
>
> Delaney's blows to Alvarez made him stop kicking and Rand was able to turn Alvarez on his stomach. Alvarez was then handcuffed with his arms behind his back. Cst. Rand could have put his knee on Alvarez to hold him down. Cst. Butcher was also around by then and Cst. Rand is unsure who handcuffed Alvarez or whose handcuffs were used. As soon as he was handcuffed, Alvarez was raised to his feet and put into the car. Rand did not see Cst. Butcher strike Alvarez at all, and he did not see anyone kick Alvarez. Cst. Rand does not remember Alvarez saying, 'That's enough - I give up.', or anything else. Cst. Rand cannot say one way or the other if it is a forage hat he is holding in his left hand in photograph number 1 of Exhibit 21. He does not think the black

object in photograph number 2 of Exhibit 21 is a forage hat. He denies hitting Alvarez once he was handcuffed and raised to his feet, just before Alvarez was put into cruiser car 1662."

Exhibit 13A (CKND-TV tape), shows the following sequence of events:

The CKND camera crew are shooting off the top of the CKY car, which is parked three cars ahead or west of cruiser car 1662 at the north curb on Bell Avenue. At approximately 4:50:00 the camera is directed in the vicinity of Alvarez and Rand briefly. Cst. Rand is seen struggling with someone who later turns out to be Alvarez at the rear of cruiser car 1612, and Cst. Rand's hat is not on his head. Dr. Carl Ridd is a few feet south of them. Cst. Fennell is on Cst. Rand's left and Cst. Ramsay and Wayne Glowacki are to the east a few feet. Camera briefly leaves them swinging to the front of 1612 and Cst. Hardy can be seen still at the front of that car. The camera swings back to the action surrounding Alvarez, the picture blurs briefly as the lens is focused for a more close-up shot, and everyone is in relatively the same position. Cst. Rand swings Alvarez around to his right and they fall on the ground. Cst. Fennell follows around with Alvarez and Cst. Delaney walks around Fennell and approaches Alvarez from the south. Cst. Delaney is seen to bend down in the vicinity of Alvarez. Gabriel Daza is being handcuffed over the trunk of cruiser car 1612 by Cst. Paul Brown and the camera remains on them briefly. When it swings back to the south, Cst. Butcher is standing just south of where I suspect Alvarez is laying, Cst. Fennell is just leaving, and Cst. Ramsay is apparent to the east. Cst. Butcher turns around and moves to the south, Cst. Fennell is seen apparently talking to Michael Balagus, and Cst. Ramsay is facing south towards the crowd. At this point Jorge Barbaric, who is standing just west of where Alvarez is presumably lying, turns towards the camera (west) shouting and waving his arm in the air. At this point the camera goes out of focus for a wider angle of the crowd and there is a break.

The tape resumes with a view at the rear of 1612 where David Hall is at the left of the screen. Several police including Sgt. Nicholson and Cst.

Owens are controlling the crowd to the south. As the camera moves to the north, Sgt. Vokey is seen at David Hall's left side with Michele Pujol just coming into view from the south. As the camera continues north to the vicinity of Rand and Alvarez, Sgt. Vokey is seen looking down at them, Cst. Butcher is watching from the east, and Cst. Delaney stands up momentarily. Nestor Molinas, Jorge Barbaric and Fernando Rodriguez are all observing from the west, directly inbetween cruiser cars 1612 and 1662. David Hall jumps in and points in the direction of Alvarez and is shouting. He is pushed back by Sgt. Vokey and Cst. Butcher. Wayne Glowacki is still taking overhead pictures from the east. Sgt. Vokey bends down momentarily on the south side of Alvarez' position. Brian Daly is removed from the rear bumper of 1662 by Ramsay. David Hall is again seen pointing and hollering as Bruce Willows and Paula Fletcher enter the picture from the south. Paula Fletcher is held back by Cst. Owens, Sgt. Vokey, and Cst. Fennell. Doug Tottle has now joined the group just west of Alvarez' position. Dr. Mahood is pushed back at the rear of 1662 by Cst. Ramsay, and Michele Pujol is seen looking down in Alvarez' direction. Steven September is seen two or three rows back in the crowd behind 1662. There is a break in the filming and the scene shifts to the action on the north side of cruiser car 1662.

A review of Exhibit 11(c) CKY-TV tape, indicates that the camera crew is shooting from behind cruiser car 1662 towards this incident, but the camera's view is often interrupted by persons in the crowd standing in front. Regina Bueno is first seen shouting what sounds like a number and 'he beated him.' The following sequence follows:

00:31 Cst. Delaney is seen kneeling to the south of where Alvarez presumably is, with handcuffs in his hand.

00:43 Cst. Fennell is facing Michele Pujol who is east of him and pointing at his hat badge.

00:52 Camera crew has now moved around to a position in front of 1662. Cst. Rand's head can be seen on the south side of the car where he presumably is holding Alvarez on the ground. Cst. Delaney is in a kneeling position just south of Cst. Rand. Cst. Butcher is standing behind Cst. Rand and bends down to assist Cst. Rand in putting handcuffs on Alvarez.

01:02:16 Cst. Butcher raises up and turns around to his right and is seen with a police cap, his baton, and what appears to be one or two notebooks in his left hand. Sgt. Vokey, Constables Ramsay and Fennell are busy holding the crowd back.

01:21:25 Alvarez is seen laying face down with his arms handcuffed behind his back. He is raised to his feet by Cst. Rand and Cst. Delaney opens the door of cruiser car 1662, and Cst. Rand puts him inside."

Finally we have before us Exhibit 21, 33 photographs taken by Wayne Glowacki and developed by Regina Bueno. The exhibit is comprised of 33 photographs and depict much of the Alvarez incident. Photographs 1 to 8 show the beginning of the struggle between Rand and Alvarez near the driver's side of the car parked at the north curb on Donald Street directly behind the Llada which was parked along cruiser car 1612. Photographs 4 and 5 show the intervention of another demonstrator (other than Alvarez). Throughout photographs 1 to 8 Rand seems to gain control of Alvarez but appears to be on the ground beneath Rand. In photograph 9 Alvarez is obviously on his feet and is being held under the arms from behind by Rand and in photographs 10 and 11 Rand is given some assistance by Constable Fennell. Rand and Alvarez are now located to the south side of cruiser car 1662. Photographs 12, 13 and 14 show Daza's arrest by Constable Brown, with Constable Ramsay standing to the left wearing a shirt and no jacket. We assume that the leg shown in photograph 12 below Constable Butcher is that of Alvarez. Photographs 15 to 20 show primarily the police holding demonstrators back, but photograph 19 shows Rand kneeling down, presumably on top of Alvarez with Constable Delaney on Rand's left and Constable Butcher directly in front of him. Photographs 21 to

24 show Constables Ramsay, Fennell, Owens, Butcher and Sergeant Vokey keeping the area around Constable Delaney relatively free from interference. Photographs 25, 26 and 27 show Constable Ramsay remove Brian Daly from the area of cruiser car 1662. Photographs 28 to 33 simply show the demonstrators being held back by the police from the area of the left side of cruiser car 1662, where we assume Rand and Delaney are handcuffing Alvarez.

A SECOND ARREST BEHIND CRUISER CAR 1612

Another incident took place during the course of the Alvarez arrest. Daza was standing near the rear of cruiser car 1612 at the beginning of the Alvarez incident. There is an issue between Daza and Cst. Paul William Brown as to what exactly transpired.

Brown reported to the Commission Investigator as follows:

> "Cst. Brown was busy moving people from the rear of cruiser car 1612 when he observed Constable Rand and another policeman attempting to arrest a male person. He saw Daza at the front of the crowd screaming at Cst. Rand and his partner...and calling them pigs and stuff like that. He then saw Daza grab Constable Rand by the back, trying to pull him away from Alvarez. Constable Brown intervened by pulling Daza from Rand. He then bent Daza over a cruiser car where he handcuffed him and then took him out of the crowd to the median of Donald Street. Daza offered no resistance to his arrest and no force was applied to him..."

When asked about the matter Rand had no recollection of Daza becoming involved in or interfering in the apprehension of Alvarez. After the event Rand found that his jacket had been ripped, but cannot directly attribute the ripping of his jacket to Mr. Daza's actions.

As stated earlier Daza informed the Commission Investigator that he was standing near the rear of cruiser car 1612 during Alvarez' arrest. Two police officers were struggling with Alvarez on the ground, one holding Alvarez by the hands and the other close to Alvarez' feet. He observed police hitting Alvarez on the leg and heard Alvarez yelling. At that point he remembered about Alvarez' two prior operations on his legs. Daza said that he was behind the policeman who he thinks was doing the hitting and moved up "and pulled at the policeman's hand so that he would see Daza." Daza then told the policeman in English "don't kick in the legs as he has two operations in the legs." He denied jumping on the policeman's back, as he realizes that it would be illegal to do so. He states that he did not grab the policeman's hand with violence, but simply wanted to inform him not to hit Alvarez' leg. He denied swearing or calling the policeman any names. He stated that as soon as he grabbed the policeman's hand, another policeman came over and took Daza by the right arm, putting it up behind his back. Daza was put over the trunk of the car and handcuffed and then taken out to the median of Donald Street where he was held until the arrival of the patrol wagon.

There is an aspect to this apprehension which we note. Brown informed the Commission Investigator that when he took Daza out to the median of Donald Street he noticed a cruiser car parked on the median. He opened the door of the cruiser car and placed Daza in the cruiser car, pending arrival of the patrol wagon. He noticed that there already was a prisoner in the cruiser car. With Daza and the other person seated in the cruiser car Daza stood by until arrival of the patrol wagon. He then took Daza out of the cruiser car and placed him in the patrol wagon. Brown has no recollection of the number of the cruiser car and has no idea of the identity of the second prisoner who was seated in the cruiser car. Five arrests were made by police officers in the area of the United States Consulate and none of those five would be the second person who was seated in the cruiser car. None of the other twenty-nine police officers who attended the scene were able to account for the identity of the second person.

The matter becomes more complicated given the fact that Daza, on interview by the Commission Investigator, denies that he was ever placed in the cruiser car. The identity of the second person remains a mystery. The probability is that Brown is either mistaken about having placed Daza in the cruiser car or about the presence of a second prisoner. One wonders.

EVENTS ON THE NORTH SIDE OF CRUISER CAR 1662

At approximately the time when Rand placed Alvarez into cruiser car 1662 a series of events took place on the north side of that car. It is clear from the videotape that a male attempts to open the rear door on the passenger side of cruiser car 1662 apparently to let Alvarez free. A police officer jumps over the trunk of cruiser car 1662 from the south side to the north and the police officer and the person who had tried to open the door disappear from the view of the camera. No arrest follows but events take place which include the following: some activity by Mahood with his bicycle; an event which leads to the arrest of Willows; the arrest of Willows; the interaction of Hall and Butcher; the interaction of Salazar with Ramsay, Ramsay with Bruce Willows, Salazar with Rand, followed by a chase down Donald Street. No single witness viewed the entire series of events, but much of what followed is shown on videotape and in the photographs, Exhibit 12. Aspects of the sequence of events were recounted by media witnesses, demonstrators, police officers and two impartial observers.

We first deal with the media witnesses, Balagus and Dovey. Balagus deposed that he saw two police officers restraining a man (who we know to be James Willows) upon the north side of cruiser car 1662. He said that he believes the prisoner was on the hood of the car. It was the car which was parked alongside the curb on Bell. He said that the crowd surged in. Balagus said that he was about eighteen feet away initially and moved closer to a point five to six feet away. He said that he had a clear view. His view was not obstructed at all. He saw two police officers restraining the man over the hood. A third police officer came from behind. This police officer left his feet and came down with his nightstick on the man's head. Balagus said that another police officer became involved and administered several blows with his elbow to Willows. There were two or three blows struck up around the shoulders and back area. The prisoner's feet were on the ground. Balagus did not see the prisoner at any time kicking police officers. It appeared to Balagus that the prisoner was under control and not going anywhere. One of the prisoner's arms was behind his back. The police officer who hit Willows with his elbows was shorter, wore glasses, had a mustache and Balagus was unable to describe the police officer who hit the blow with the nightstick. Balagus said that he saw the nightstick hit the prisoner's head. Balagus stated that the blow with the nightstick did not strike a police officer's hands, it struck the crown, centre top of Willows' head. Balagus stated that when he saw the blow from the nightstick strike, he checked to make sure that his photographer got a shot of it. He said that the blow to the head came before blows with the elbows. He said that after the blows with the elbows he moved.

In cross-examination by Counsel for the City of Winnipeg Balagus maintained that he had a clear unimpeded view of the blow with the nightstick. It was one blow. Willows was struggling. Balagus had not seen Willows kick out with his feet. Balagus did not see Willows obtain control of a nightstick and throw it into the crowd. When shown photograph 118 Balagus said that the blow with the nightstick occurred just before that picture was taken. He rejected Mr. Scott's suggestion that he (Balagus) was not in a position to see the blow strike and that he had merely heard the blow strike.

Dovey saw a person face down on the back of a cruiser car. He said that two police officers had hold of the prisoner's arms. Dovey was more concerned about a guy with a bicycle. He saw the prisoner receive elbow smashes on the passenger side of the car.

In cross-examination by Counsel for the City of Winnipeg Dovey said that the bicycle caused him a problem. Dovey found it strange. He believes that the man with the bicycle was holding it up. Dovey wanted to know what the man was doing with it. We know the person with the bicycle to be Mahood. Dovey described Mahood as moving the bicycle in the direction of the police officer. Dovey had been asked by the police to move but acknowledged that it was possible that he was in the way. Dovey did not see Willows struggle when he was on the hood of the car. He saw Willows struggle after he pushed off the car onto the boulevard.

Other media witnesses observed a chase on Donald Street. Glowacki observed a police officer chasing a demonstrator down Donald

Street. Glowacki was not aware of the reason for the chase. He said that the police officer was swearing at the demonstrator. The police officer wanted to grab hold of the demonstrator and the police officer implied that he wanted to fight the demonstrator. The police officer was saying "come on, come on." When the chase began the demonstrator ran out of the crowd and the police officer ran after him.

In cross-examination by Counsel for the City of Winnipeg Glowacki stated that he did not see what led up to the chase. He could not remember whether the demonstrator was egging on the police officer.

Bennett gave evidence that he saw a police officer chasing a young man on Donald Street. He thought that someone might get hit by a car.

David Hall witnessed portions of the arrest of Alvarez and of Willows and related his observations to the Commission's Investigator. Earlier in this report we have summarized Hall's account of Alvarez' arrest. His account to the Commission's Investigator continued as follows with respect to the arrest of Willows:

> "Moments later I saw the police grab a second man (Willows) and throw him face down on the trunk of the cruiser car. He was struggling but appeared to be under control when a third officer, who I could not identify, came to the car facing the pinned man and raised his club over his head. For a couple of seconds he weaved his head, shoulders and arm, clearly trying to find an opportunity to strike the pinned man's head without hitting his fellow officers. I was terrified of the potential consequences and pushed through the crowd to his rear and grabbed the officer's shoulder, still calling for a camera. When the officer turned I jumped back into the crowd. From there I saw the police officer who I had seen beating the earlier man with his club. He was now repeatedly striking the man pinned on the

trunk with his elbow. He struck him several times in the small of the back in the area of the kidneys. As in the previous instance he was making no effort to hold or handcuff the demonstrator, but simply striking him with great force. I waited until the police had handcuffed the pinned man and then tried to get the badge number of the assaulting officer...and when they were on the ground the kid's head was cheek down on the cement. I went over there and put my hand between his face and the concrete because I thought his face was going to be hurt, and also to tell him to relax and let them take you away - I probably added somebody would be down to bail him out later. I recall he was bleeding a little from his nose or mouth likely. The young fellow was no longer struggling by then, and they got him into a cruiser."

Pujol reported to the Commission Investigator as follows:

"Immediately after that (the Alvarez arrest) the Willows thing happened. I was about three feet behind the car and saw Willows standing about 3 feet from the right rear door. A policeman standing by the left rear door yelled something to Willows, and used some foul language but I can't remember his exact words. Police officers rushed all around the car towards Willows, and the one who had yelled leaped over the trunk at him. I thought that was a pretty amazing performance. 3 or 4 policemen grabbed Willows who tried to get away. They held him from all sides and one policeman appeared to hit him on the head with his truncheon as they moved Willows to the back of the car. I think I saw at least 3 strikes. It was impossible to see Willows as 2 or 3 officers were basically laying against him over the trunk of the car. One policeman continued to beat him as they held him down.

I moved around to the sidewalk directly behind and about five or six feet away from them. Other demonstrators, maybe six, came around me and we were yelling at them to stop. The police were still hitting down on Willows and hitting him with the butt end of their truncheons held with both hands. A man on my left and behind me with a heavy knit sweater and white shirt underneath (who we know to be Hall) moved forward and tried to pull away a policeman that was on top of the heap. He was chased away by another policeman. The police moved in around the car and prevented

> other demonstrators from intervening. I moved closer in then and started asking the policemen for their numbers in a direct attempt to calm them down."

Dr. Ridd reported to the Commission Investigator that he saw a man draped over the back of a police car. Ridd was standing more toward the front of the car and on the sidewalk away, about thirty feet from the event. He could see three or four police officers holding onto this man and continued:

> "and one policeman, and this is one of the most horrifying sights I've ever seen in my life, he was standing, his helpers were holding some figure, and he was standing behind or in front of the figure, I have no idea, and he was striking with his night stick, just hit, hit, hit, hit, hit. I don't know how many times he hit. He was swinging with all his force and his face was contorted as he did so. He was just, and not a hit and a pause to gather strength or anything like that, as fast as his arm would take itself up and down, he was hammering on this item of flesh that was underneath him. I wanted in the worst way to rush over and grab that guy but I know, I knew what would happen to me. I would be the next one hit....There was nothing I felt I could do but watch this thing and say to myself, I am going to tell people what happened and I'm so glad for this inquiry where I can tell it officially."

Dr. Paul Phillips, a demonstrator reported the following to the Commission Investigator:

> "Two policemen held an individual, forceably bent face down over the hood of the police car. At this point a third policeman with a truncheon came up behind him and began, unprovoked and repeatedly, to beat the individual about the head and shoulders, perhaps five or six times. A demonstrator wearing an Indian sweater (who we know to be Paul) attempted to restrain the policeman's arm to prevent physical, perhaps even mortal, damage to the defenseless protester from a full swing with a truncheon. The policeman whirled around, threw off his hat and attacked the person in the Indian sweater and all those near him

> swinging indiscriminately and with abandon, hitting a number of people whether involved or not."

Boris Vladimir Salazar reported to the Commission Investigator that he remembered a prisoner being held over the hood of the car by the police. "Two police were holding him I think when another police hit him with his stick. I actually saw that stick hit the fellow on the head."

Kelly Jean Saxberg, a demonstrator, reported to the Commission Investigator:

> "We started to leave but changed our minds and as we turned back Maureen and I saw three policemen holding a man up against the police car. One of the three policemen was hitting the man with his arm, but I couldn't see where the man was being hit. Another policeman was holding him against the car and the third policeman lifted his baton and with a lot of force hit the man on the head. I'm sure the blow landed on his head because of the arrested man's position and horrible crack it made on landing. It definitely did not land on the car but on a person judging from the sound. Maureen and I turned away because we were so upset and started to leave again but didn't. The police were swinging their clubs and pushing and chasing after people. One policeman ran past me chasing a guy, and half pulled off the guy's jacket. The policeman stumbled a bit and then gave up."

Douglas Raymond Tottle made the following report to the Commission Investigator:

> "His own observation of the Willows arrest is that the kid was smaller than the two or three police officers surrounding him and he was obviously subdued and he had been thrown face down on the trunk of the car and couldn't hurt anyone. Tottle's recollection is that the prisoner was hit half a dozen times while being firmly held down and in his own words 'absolutely sadistic - made me sick'. Tottle says normally he would have approached the officers and said something but because of their obvious mood he only thought he would get

> the same - either a shot in the face or his camera broken. He continued to take pictures unmolested but feels he probably ran out of film, and because of the importance of the film, left that vantage point to ensure the film was protected. Unfortunately much of the film was either under or over exposed and did not turn out good."

Three demonstrator witnesses gave viva voce evidence about the events which took place on the north side of cruiser car 1662. These witnesses were Mahood, Ortiz and Salazar.

Mahood stated that after Ortiz was placed in the car after the cruiser car was rocked he intended to leave the area. He made his way in an easterly direction. A flurry of activity caught his attention. He pushed his bicycle closer in order to get a better look. When he was fairly close he was told by a police officer to remove his bicycle. He left the bicycle by the tree and he returned to the scene from which he had removed his bicycle. He insisted that any contact between his bicycle and the police was unintended. He said that he saw two police officers holding a demonstrator face down on the ground. One police officer's arm was on the prisoner's neck and one of the prisoner's arms were behind his back. The prisoner was being physically held down. Mahood was concerned about his physical well being. Mahood was concerned about the prisoner's ability to breath. Mahood identified the person as the person who had been held earlier on the trunk of the cruiser car. Mahood had not seen any of the incidents while Willows was on the trunk of the cruiser car. Mahood said that he reported the matter to a police officer in a white shirt, who we know to be Inspector King. Mahood told Inspector King of his concerns about the demonstrator on the ground. Mahood also said that he thought that the police were behaving in an uncontrollable harshness. He said that the Inspector denied this and said that Mahood needn't worry about the demonstrator on the ground. Mahood's recollection was that there was an arm either around or across the prisoner's neck. He then left the demonstration.

Ortiz gave evidence that while he was seated in the back of cruiser car 1612 as the car was backing up toward Donald Street, he saw two or three police officers with a person on the trunk of another police car. He saw a police officer come from behind and strike the person on the head with a nightstick. Ortiz said that he got so upset on seeing this that he asked both police officers what is going on. According to him his words were "For Christ sake what are you doing?" Ortiz had no doubt that Willows' head was struck. He said that he had an unobstructed view and that his recollection is very clear. The nightstick hit the crown of the man's head. Ortiz also said that he saw one police officer hitting the prisoner with his elbows. That police officer hit him two or three times.

Jorge Salazar said that he saw a police officer jump over the trunk of a police car and hit a guy with his nightstick. The person struck was 16 or 17 years old. He was unable to say what the youth had done. The youth had been standing by the back door on the passenger side of cruiser car 1662. He was not sure whether Alvarez was in the cruiser car at this time. Salazar did not do anything at this moment. He said that the police officer was hitting the youth real hard with his nightstick and he identified Constable Butcher as the officer. He said that he was just standing around right beside the sidewalk where fighting was going on between two police officers who were trying to arrest a Canadian person. He said that the police officers were hitting the man and punching him. One police officer was hitting with his elbow. Salazar said that the police officers had this guy face down on the back of the police car. The officers were holding him and one was hitting him with his elbow. The police officer struck the demonstrator three or four times. He said that a Canadian guy approached and grabbed one of the police officers. Rand grabbed the Canadian guy. Salazar went and tried to pull Rand apart from the Canadian guy. When shown photograph 117 Salazar said that he grabbed the police officer wearing the glasses, who we know to be Ramsay. Salazar grabbed the police officer's shoulder and tried to pull him apart from the demonstrator (Bruce Willows). Salazar stated that he got mad and got inside again and kicked Constable Rand in the groin. Salazar said that he was wearing runners at the time. He stated that he did not hit Ramsay on the left side of his head. He did not remember touching Ramsay with his (Salazar's) hands. He said that he went after Rand because Rand was violent and insulting. Salazar said that when he kicked Rand he backed up. Rand said "you son of a bitch" and chased Salazar to the north. He quoted Rand as saying "Stop you fucking bastard." There was a bus coming. He turned around, Rand tried to grab him and Salazar just pushed his hand out of the way. Salazar said that Rand was within half a metre of him while chasing him. He said that Rand did not tell him that he (Salazar) was under arrest. Salazar said that Rand chased "me because he wanted to beat me." Salazar said that he does not remember Ramsay's glasses coming off. When shown

Exhibit 12, photographs 117, 118, 119, a sequence showing Ramsay's glasses coming off, Salazar maintained that he did not hit the policeman. He (Salazar) was not the only person who was in there.

In cross-examination by Counsel for Fletcher et al, Salazar said that he saw Ramsay hit a man (who we know to be Bruce Willows) in the groin. He said that Rand did not show any respect for anyone. He was insulting. He pushed people, he hit people. He said that he did not kick Rand real hard. He did not make contact with Rand's groin, just his pants. Nobody kicked in the groin could have gone after him. Rand was the most violent, most cruel policeman.

When cross-examined by Mr. Deutscher Salazar said that he is very sure that he did not hit Ramsay with a closed fist. He could have touched him with the upper part of his right shoulder or upper arm. He could have caused Ramsay's glasses to fall off.

When cross-examined by Counsel for the City of Winnipeg Salazar said that when he saw the police officer using his elbow he (Salazar) was standing in the back of the police car which was closest to the curb. He was four to five metres away. There were people between him and the incident. He said that he does not deny coming into contact with Ramsay. He denies that he punched Ramsay. It could be that Ramsay lost his glasses because of some contact. He maintained that he can gauge the force of his blows pretty accurately. As a result of his contact with Ramsay, Ramsay disengaged himself from Willows. With Rand his purpose was to hit him. He wanted Rand to feel pain. It was easier to kick Rand than to hit him. He was not really surprised that Rand was able to chase him. Rand blacked out for two or three seconds at first.

Alvarez advised the Commission Investigator that while seated alone in the back seat of cruiser car 1662 he saw Willows being forced onto the back of the car by police and given "shots" by one of the policemen with his elbow. Alvarez stated that he saw Willows was bleeding from the nose, and thinks it was the left nostril. Alvarez did not see Willows struck with a nightstick. Willows was eventually put into the back of the car along with Alvarez.

One police officer gave viva voce evidence at the Inquiry about the events on the north side of cruiser car 1662. This police officer was Vokey. Vokey stated that one police officer went over the trunk of 1662 but he (Vokey) went around the back of the car. He stated that a second individual (Jim Willows) was pulling at the door and window of the rear of cruiser car 1662. That is when Willows was arrested. He said that Willows was engaged by Delaney who was in front of him. A struggle ensued between Delaney and Willows. Willows was facing south and Delaney behind. Willows was in control of Delaney's defender baton. He said "We ended up in the rear of the car. I had Willows by the shoulder." The police officer who struck Willows with his fists and elbow was Delaney. Vokey said that the first time that he noticed the baton was as it was coming down on his hands. As the baton was raised after striking the blow, he believed that Delaney was hit in the face. He said that the baton impacted fully on his hand. Willows threw Delaney's defender baton into the crowd towards the intersection. Vokey went to get the baton. As Vokey reached the point where the baton was lying on the ground a fellow was bending down to pick it up. Vokey told the person that if he touched the baton he was going to lose his arm. The man backed up. Vokey picked up the baton and returned it to Constable Delaney, placing it in Delaney's holder. Willows fell away from the trunk of the cruiser car toward the manhole. A struggle took place with Willows on the ground involving Vokey, Delaney and Ramsay. Willows continued to resist while on the ground. Willows was handcuffed and lifted to his feet. Willows was taken to the passenger side rear door.

Vokey said that he bruised his right knee on the manhole cover. Moreover his thumbs became swollen 2½ times their normal size and he had bad bruising on his right thumb. Later in the day Vokey went to Victoria Hospital as a result of the injury received from Butcher's blow. Vokey was off work from October 28th to November 20th, 1983. His thumb still has not healed.

Medical report filed as Exhibit 28 showed a diagnosis that Vokey was on October 28th, 1983 suffering from a soft tissue injury to his right thumb.

Medical report filed as Exhibit 29 showed that Willows was on October 28th, 1983 suffering from an abrasion to his upper lip, tenderness to his mid-thoracic spine area and a small abrasian to his back, but the report shows no complaint or sign of injury or tenderness to his head.

Five police officers gave an account of the events on the north side of cruiser car 1662 to the Commission Investigator. These officers are Butcher, Delaney, Ramsay, Hasenpflug and Rand.

The following is the Commission Investigator's summary of Butcher's interview:

> "Constable Butcher was near the rear of cruiser car 1662 to keep people back as there was now a prisoner in the rear seat. The persons were very close and pushing them. He suspects it may have been in this case that a fellow had the rear passenger side door open and that accounts for Constable Butcher's rush in getting over to that side by vaulting over the trunk of the cruiser. He remembers the fellow at the cruiser car door as a young male in his early 20's, 6 foot or 6 foot, 2 inches. Constable Butcher got his hand on the fellow's chest and ran him back into the crowd and then closed the cruiser car door immediately. He had an older issue baton in his hand at the time, about 18 inches long and an inch or an inch and a quarter in diameter, of light wood construction. He decided to stay near the car and again the crowd was pushing forward. He used his baton to keep the crowd back without hitting anyone. He knows from watching videotapes of the incident the gentleman with the bicycle off to his left, near a tree, obstructed him. He then noticed Constable Delaney and Sergeant Vokey arresting a fellow whom he does not know (Willows) and they were wrestling with him at the car. Willows was kicking quite a bit and Sergeant Vokey and Constable Delaney were unable to secure his arms to handcuff him, so Constable Butcher stepped in to assist. Sergeant Vokey and Constable Delaney were attempting to put Willows face forward over the side of the trunk of the car to bend him down to bring his arms up at the back. Willows had his feet up off the ground balancing himself on his stomach. From that position he was able to kick out and strike both Constable Delaney and Sergeant Vokey and subsequently kick Constable Butcher 2 or 3 times in the thigh. As a result Constable Butcher stepped over to Sergeant Vokey and Constable Delaney and attempted to strike the prisoner on the back with his nightstick. He recalls leaving the ground to deliver this blow, and when asked on interview, his recollection was that he struck Constable Delaney in the face, although other police evidence is consistent that he struck Sergeant Vokey on the hands. That is the only blow he struck in Mr. Willows' direction. Constable Butcher did not see Constable Delaney hit Willows with his hand or elbow at the time,

> but he has since viewed this action on videotapes. Constable Butcher remembers specifically someone grabbing him on that side of the car, but is not clear on the sequence of events. He thinks he may have pushed this man or swung his baton at the man, but really cannot say. He recalls retrieving Constable Delaney's hat off the ground, one of about 10 altogetner during the time he was there. Some of the hats he returned to the owners and others were thrown into locked cruiser cars. Constable Butcher is unclear of subsequent events but remembers Willows being held against the car and eventually handcuffed. He explains because of the restriction of people moving in close, he did not have the option of moving away from Willows and found himself either facing Willows and being kicked or turning around and being kicked. He cannot decipher his actions that easily, but initially began to assist Sergeant Vokey and Constable Delaney by going for Willows' arm and holding it, but after being kicked numerous times he attempted to hit Willows with his baton."

Delaney's account to the Commission Investigator is summarized as follows:

> "Moments after Alvarez was put into cruiser car 1662, Constable Delaney was still on the driver's side of that cruiser car when he noticed maybe 3 to 5 people at the passenger side rear door of 1662. He saw one person in particular, whom he cannot describe, actually place his hand on the door handle to open it to assist Alvarez in getting out. Both he and Constable Butcher almost hurtled the rear trunk to get on the other side to keep people away. While doing this he looked momentarily to his left where Constable Butcher was standing, and was instantly blind-side tackled from the right by someone possibly wearing bluejeans and a bluejean jacket who he cannot further describe. This tackle knocked Constable Delaney to the ground where he sprawled out. He got up immediately and saw some equipment from his belt had fallen off. He picked up his flashlight holder and reattached it. He then looked to his right and saw Sergeant Vokey struggling and having a rough time with a man who he now knows as James Willows, who was squirming, pushing, shoving and also appeared to be kicking. Constable Delaney went to assist Sergeant Vokey by grabbing Willows whereupon Sergeant Vokey let go, possibly to recover

some equipment on the ground. Willows continued to shove and push with Constable Delaney. Constable Delaney immediately grabbed Willows placing his right arm behind his back to try and place him over the rear of cruiser car 1662. While doing so Willows attempted to step on Constable Delaney's shins and tried to kick him once or twice with his left leg. To stop him from doing so Constable Delaney used his elbow and hit Willows, he thinks twice, in between the shoulder blades. This seemed to Constable Delaney to be the easiest and most effective method of slowing Willows down and stopping him from doing this. Constable Delaney very vividly remembers the elbow hits and concedes after viewing the videotapes it may have been 3 rather than 2 elbow strikes. Following this action Willows was placed off the trunk onto the ground and handcuffed by other officers who Constable Delaney thinks may have been Constable Butcher, Sergeant Vokey, and possibly Constable Ramsay.

Constable Delaney has studied Tai Kwon Do, a Korean form of martial arts, for the past two and a half years and has a red belt in this art. He says he was employing some of this knowledge when he delivered the elbow strikes to Mr. Willows and was using it to stop him from kicking, but not as a severe force to injure. He made a decision at the time to use his elbow and hit Willows between the shoulder blades which would not cause severe damage to the body at all but would sting and cause him to stop fighting, and maybe be able to subdue and handcuff Willows. Constable Delaney was going between the shoulder blades and not singling on the centre of the spine and at the time it seemed to be the least amount of force he could use to stop Willows. Constable Delaney estimates Willows as approximately his own height, which is 5 feet, 10 inches, and a little stockier in comparison to him. He found Willows quite strong in trying to place him over the trunk of the car.

Constable Delaney feels his actions had the desired effect on Willows as he was handcuffed shortly after and the problem solved. Constable Delaney's recollection is he was holding Willows by himself at the time he administered the blows, he was holding Willows' right arm behind his back, and Sergeant Vokey was not assisting.

Constable Delaney has no recollection of Willows being struck with a baton by anyone during the altercation."

Constable Ramsay's account is as follows:

"Constable Ramsay was in the area of cruiser car 1662 when he saw some unknown person near the passenger side rear door. He saw Sergeant Vokey go over to that area and was immediately jumped on by someone in the crowd. His partner, Constable Delaney, went over the trunk of the car to assist Sergeant Vokey, and when Constable Ramsay saw his partner go, he followed him over. He recalls Constable Butcher going over the trunk too, and was already over on the north side of 1662 when he arrived. Constable Ramsay does not think they were particularly interested in arresting anyone-it was more of a matter of securing the cruiser car so the doors would not be opened.

Constable Ramsay recalls Constable Delaney and Sergeant Vokey struggling with a male person (Willows) and had him partially bent over the trunk of cruiser car 1662 in an attempt to handcuff him and get him under control. They were already in tight quarters and Constable Ramsay tried to keep people from pressing in closer. Constable Ramsay was struggling with the crowd when he was struck a heavy blow in the left temple knocking his glasses off which he never recovered. He never saw this blow coming and does not know who or what hit him. The blow dazed him, making things a little disjointed and it is still difficult for him to put things in perspective. As he was struck, Constable Ramsay turned and began struggling with a male person that he believes is the one who hit him. He describes this person as male, white, slim build, light brown hair, wearing a fisherman knit sweater with a sort of checkered design. Constable Ramsay grabbed ahold of this person and attempted to arrest him. In attempting to escape, the male person was flailing and pulling away from Constable Ramsay in the crowd, and Constable Ramsay had one hand on his sweater. Constable Ramsay had a baton in his hand and cannot remember butting or striking the male person with it although he admits from the Free Press photograph it appears that he did. During their struggle the sweater came off in Constable Ramsay's hand and the male person began to run away amongst the crowd. Cst. Ramsay gave chase with the male person running north on the sidewalk on the west side of Donald Street and it became obvious to Constable Ramsay that he was not going to be able to catch him. Constable Ramsay placed the sweater on the rear of one of the cruiser cars, and it disappeared. Constable Ramsay did not see the male person again and still does not know his identity. In addition to losing his glasses, Constable Ramsay lost his tie, police hat, and top button off his shirt during this encounter.

On returning to the vicinity of cruiser car 1662, Constable Ramsay saw Sergeant Vokey and Constable Delaney still struggling with a male (Willows) at the rear of the car trying to get him in handcuffs. They had Willows over the car and were getting his arms behind him so they could put him in handcuffs to make an arrest. During this time the male person (Willows) was seen by Constable Ramsay to kick his partner, Constable Delaney in the leg several times even though he was bent forward over the car. Other police officers were in the area but Sergeant Vokey was the only one assisting in the arrest. About this time Constable Ramsay saw Constable Delaney strike the male person 1 or 2 times using his elbow. At that time the male person was essentially face down on the trunk of the car just behind the rear window. These were the only blows administered to that prisoner and Constable Ramsay observed them to land approximately between his shoulder blades. Constable Ramsay saw Constable Butcher in the area, but did not see him hit Willows. Willows stopped kicking immediately after being struck by Constable Delaney and they handcuffed him. Constable Ramsay did not see the prisoner on the boulevard at all. He believes he got the car keys from Sergeant Vokey and went around and unlocked the car doors so they could get the prisoner inside the car. Once the cruiser car door was open, the prisoner only had to move a short distance and he was in the car. Constable Ramsay saw no blood on this prisoner.

Some trouble was experienced in dispersing the crowd behind 1662 before it finally departed.

Constable Ramsay went to the Health Science Centre later that evening and was seen by a doctor in the emergency department. After examination he was advised he was suffering from a contusion to the left temple, tenderness in that area. He was given 4 Tylenol no. 3 tablets to take for

> discomfort. For 10 or 12 days following he experienced discomfort and tenderness to the left side of his head and problems with his jaw while eating."

Hasenpflug informed the Commission Investigator that he was at the front left corner of cruiser car 1662, when he first noticed Vokey and Ramsay on the ground with a male person they were attempting to arrest. The male person was struggling as they attempted to handcuff him and Hasenpflug ran over to assist. The only force he saw being used was the act of grabbing Willows' arms and trying to hold him down while he was eventually handcuffed. Then Hasenpflug and Ramsay walked the prisoner to the cruiser car.

Neither Exhibit 13A or 11C shed any light on the initial cause for Willows' arrest. Very briefly, Exhibit 13A shows the CKND camera crew are shooting from the west of the action near the front of cruiser car 1662. Beginning at approximately 05:50:00, it shows Cst. Delaney struggling with James Willows on the north side of cruiser car 1662 near the trunk, and hitting down at him with his right hand or fist. Simultaneous with Delaney's first blow, Sgt. Vokey rushes at Willows from the north pinning him either against or over the trunk of the car, and Cst. Delaney then strikes Willows two more times in the same manner with his right hand or fist. At the same time as Cst. Delaney delivers the third blow, Cst. Butcher approaches Sgt. Vokey and Cst. Delaney from behind, jumps up slightly, and swings down in between Sgt. Vokey and Cst. Delaney in Willows' direction, with an ordinary wooden baton. David Hall immediately intervenes by grabbing Cst. Butcher's right arm with his left, pulling Cst. Butcher's arm back slightly, and then Hall retreats back into the crowd. Constables

Butcher and Delaney both turn their backs momentarily on Willows to retrieve something off the ground behind them. Cst. Delaney then returns to Willows and delivers three more elbow strikes in Willows' direction with his right arm.

Exhibit 11C beginning at approximately 01:50:13 provides a little different view of some of this action. Cst. Delaney is struggling with James Willows on the north side of cruiser car 1662 and Willows clearly has both of his hands on Delaney's baton. Sgt. Vokey moves in very rapidly from the north at this point and pushes Willows up against the car, just as Delaney raises his hand to strike Willows for the first time. Approximately two seconds later Cst. Butcher is poised and strikes down with his baton in Willows' direction and Hall intervenes by grabbing Cst. Butcher by the right arm. Hall then retreats back into the crowd. It is obvious the CKY camera crew are moving to their left around some of the crowd members and as they arrive at a position on the north side and to the rear of cruiser car 1662, Sgt. Vokey and Cst. Delaney still have Willows pinned over the trunk of the car. Willows' left arm is seen to come out on the left side and throw a defender baton to the rear of cruiser car 1662. Sgt. Vokey immediately releases his hold and goes to recover the baton while Delaney continues to hold Willows over the trunk. Later in the same sequence, Willows is raised to his feet from the boulevard and put into cruiser car 1662.

James Willows has consistently refused to be interviewed for purposes of this inquiry. The Commission Investigator reports that Willows is 5'11" and 165 pounds.

A review of Exhibit 13A (CKND-TV tape) shows the following further sequence of events:

05:52:27 CKND camera crew shooting between the tree and the right front corner of cruiser car 1662, from a position behind Dr. Mahood. James Willows is on the north side of 1662 just east of Cst. Delaney.

05:53:26 Cst. Delaney bends down and as he stands up begins struggling with James Willows. Cst. Butcher is to Delaney's left near the front of the car dealing with the crowd.

05:54:18 Cst. Ramsay comes around the back of cruiser car of 1662 and appears to be grabbed by Bruce Willows. Ramsay's hat falls off.

05:57:00 Bruce Vokey is now seen to the east of the other members.

05:59:07 Jorge Salazar is seen moving west out of the crowd to the east and positions himself north of Cst. Ramsay.

05:59:19 Salazar is seen with his legs spread, facing south, with his left hand in front of him.

06:00:00 Salazar is seen to lift his right arm and hand, closing his hand into a fist.

06:00:02 Salazar lifts his right hand up near his right ear approximately at shoulder level and his body moves quickly ahead as he throws a right-handed punch in Ramsay's direction. You cannot see the blow land, but you can see Cst. Ramsay who is slightly bent over, and his head and shoulders rotate to his right at precisely the time the blow is thrown.

06:00:24 Salazar has recovered his balance and moves out through the crowd to the east. Cst. Butcher has just struck a blow in Willows' direction with his baton.

06:01:18 David Hall moves in to grab Cst. Butcher and obliterates any view of Salazar. As Hall retreats from Cst. Butcher, Cst. Ramsay can be seen grabbing Bruce Willows.

06:02:16 Salazar can be seen looking around a person in the crowd to the east of the action.

06:05:12 Salazar is seen moving out of the crowd in Cst. Rand's direction.

06:05:21 Salazar's head can be seen overtop Cst. Butcher (presumably after he has delivered a kick to Cst. Rand). Cst. Rand's right hand can be seen coming up near his left elbow after being down near his knees in a defensive posture.

06:06:28 Salazar runs around behind Michele Pujol in the crowd to the east as Rand gives immediate chase.

06:09:05 Cst. Rand can be seen running north on the eastern perimeter of the crowd.

Exhibit 11C (CKY-TV videotapes) shows the following sequence:

01:44:03 James Willows appears to be at the north side of cruiser car 1662.

01:46:24 Cst. Ramsay comes around the right rear corner of cruiser car 1662 and is grabbed by Bruce Willows. Cst. Ramsay's hat comes off.

01:50:13 Cst. Delaney is against cruiser car 1662 and has a hold of James Willows from behind. James Willows has both hands on Delaney's defender baton. Cst. Ramsay is dealing with the crowd to the north and has his glasses on but his hat off. Sgt. Vokey assists Cst. Delaney with James Willows by rushing him and pinning Willows over the trunk of the cruiser car.

01:51:20 Cst. Ramsay is slightly bent over with his back to the camera.

01:51:27 Cst. Ramsay appears to have been struck by something because his head and shoulders rotate quickly to his right, and an object I believe to be his glasses are seen flying off in that same direction. Cst. Rand is wrestling with someone (believed to be Bruce Willows) to the east of Ramsay.

01:52:08 Cst. Butcher is poised and strikes towards James Willows with his baton as David Hall jumps in to intervene by grabbing Butcher's arm. Cst. Ramsay is still bent over with his arms spread out (probably looking for his glasses).

01:54:23 Cst. Rand is seen still wrestling with Bruce Willows as David Hall now retreats from Cst. Butcher.

01:55:20 Cst. Ramsay is grappling with someone north of him. Cst. Rand is watching in Cst. Ramsay's direction.

01:57:12 Cst. Rand bends down putting his hand down towards his knees or crotch area. He then raises up, arches his back, and begins running in a northeasterly direction.

02:00:17 Sgt. Vokey is holding Willows over the trunk of cruiser car 1662 when Delaney hits him with one elbow strike.

02:07:21 CKY crew is changing position to an area north of the rear bumper of 1662. James Willows, while pinned over the trunk of cruiser car 1662, is seen to throw a defender baton to the rear of the cruiser car.

02:08:05 Michele Pujol is talking to Cst. Owens.

02:11:00 Cst. Hardy and Sgt. Vokey assist Cst. Delaney with James Willows over trunk of 1662.

02:13:00 Camera pans to the south and east as cruiser car 1612 reverses onto Donald, and Cst. Rand can be seen on the eastern perimeter of the crowd in the intersection."

Rand reported as follows to the Commission Investigator:

"Cst. Rand had just had an altercation with a person he knows as Willows and which he agrees is accurately depicted in photographs 113 to 120 of Exhibit 12. He was standing in the position shown in photograph 122 when he saw a male coming towards him from the east. He turned just in time to see the male person come in with a kick at him and Cst. Rand put his hands down in a defensive move. Cst. Rand now knows this person's name to be Salazar. Cst. Rand was in fact kicked in the groin but suffered very little pain or injury because he had got his hands down to protect himself. He is sure the pain would have been much greater had he not got his hands down. The pain stuck with him for some time but did not affect his reaction. He did not see a doctor or require medical attention as a result of the kick.

Immediately after delivering the kick, Salazar ran back through the crowd and to the northeast down Donald Street. Cst. Rand immediately pursued him and at one point got a hold of Salazar and tried to pull him down. Salazar got out of his grip and began to run again and Cst. Rand gave up the pursuit and returned to the crowd. Cst. Rand would have placed Salazar under arrest for assault if he had caught him. He also admits calling Salazar a 'son-of-a-bitch' during the chase. He does not remember Salazar saying anything during their encounter. Cst. Rand says the chase is shown in pictures 126 through to 131 of Exhibit 12."

Two impartial observers were standing on the roof of Gord's

Ski Shop across from the U.S. Consulate. The observers were Paul James Jamieson and David Allan Ingram. Jamieson reported to the Commission Investigator as follows:

> "About then a young white guy about 22-23 years old with sandy blond hair and wearing a faded jean jacket, lunged over two or three protestors and punched a policeman in the face. That happened near the northwest corner of Bell and Donald, and I'm sure the policeman never even saw the blow coming because he was already dealing with two or three other protestors. When he was hit the policeman just plowed through the protestors in front of him to get at this guy. The white guy ran dodging in and out of cars on Donald Street. The policeman chased him and they zigzagged in and out of traffic. Finally the guy was caught by the jacket by the policeman on the sidewalk north of Bell Avenue. The young guy squirmed out of his jacket and gets away by running north and then went down the back lane. I didn't see the policeman after that. It was about that time the police stopped traffic on Donald and directed all southbound traffic west on River Avenue because the demonstrators were spilling out onto Donald."

Ingram reported to the Commission Investigator as follows:

> "I saw one of the crowd near the intersection of Donald and Bell jump across three or four people and punch a policeman right in the face. The policeman pushed his way through the crowd and chased the guy in and out of traffic on both sides of Donald. The policeman got the guy by the jean jacket but the guy got out of it and ran away north on the west side of Donald."

THE INCIDENT ON THE MEDIAN OF DONALD STREET

When cruiser car 1612 was finally able to back onto Donald Street it started to move forward in a southerly direction, with the intention of taking its occupants to District 6 police station. An incident took place. The incident is partly shown in Exhibit 11C. It was touched on in the evidence of Ortiz, Nicholson and Capner, viva voce at the Inquiry. Further, information about it was given to the Commission's Investigator by one media witness, seven demonstrator witnesses, two independent observers and three police officers. The incident concerns a confrontation between Constable Hutch and Patricio Zeiss, a demonstrator.

Zeiss reported to the Commission Investigator as follows:

> "The police opened the people up and 2 or 3 police watched each side of the car guarding it so nobody could get close to it. They backed out onto Donald Street and the car with Gundher in the back seat started to go south. I moved from where we had tried to make our chain to the south and then out onto Donald Street in front of the police car. I don't know why the car stopped but I got in front of it and started calling people to join me, and then I sat down on the ground bout 3 feet in front of the car. I made sure the policeman driving the car saw me first, and he had a female police officer in the front with him. She looked very scared to me.
>
> A big policeman in uniform came off the middle boulevard and grabbed me by the front of my jacket which was closed at the time. He lifted me to my feet and threw me up against a police car parked on the middle boulevard. He had me right up in the air off my feet and it was very easy for him because he is about 6'2" with a powerful build. He was about 46 years old with a big stomach. He wore a police hat but I think he was bald although he may have had a little bit of short grey hair.
>
> When the policeman threw me I landed with my back

> against the left side of the car near the front wheel. The policeman was swearing at me and tried to punch me in the stomach with the short end of his stick - that kind that is black with a handle on it - but I turned to my right quickly and he just touched me with his hand and missed with the stick. I sort of turned my back to him and that's when he started kicking me on my backside and legs. I moved around to avoid his kicks because he kicked very quickly and missed a lot. He was shoving me around and I turned to face him to try and get away, but I either tripped on him or fell down. He was still shouting at me to get out of there so I tried to scramble away like a cat and he kicked me on the right ankle. I got up then and ran across Donald to the sidewalk in front of the Consulate where I stood and looked back at the policeman. He didn't chase me because I guess I never once put up any kind of resistance to a guy that big. He hollered at me to get out of there but I just stood there and said 'no - why should I?' The police car with Gundher in it had already gone. I didn't see that big policeman again."

Zeiss informed the Commission Investigator that he saw Ortiz two or three days after the demonstration and Ortiz told him that he (Ortiz) had seen Zeiss kicked by the police from inside the car and that Ortiz said that he felt sorry for Zeiss. When asked by the Commission Investigator how many times Zeiss had been kicked by the police officer he replied that the officer missed more than he hit, but he probably kicked Zeiss six or seven times, "there were only about three really hard ones that hurt and that was when he had me up against the car." Zeiss said that he was sore but not bruised afterwards. He did not feel anything at the time but the next day he had a pain in his upper right leg. He continued "my right arm also hurt me but that may have been from falling down or when he threw me against the car." He stated that his jacket was torn in the scuffle.

One of the pockets was torn and the zipper was broken. Some teeth in the zipper were torn out. On interview with the Commission's Investigator Zeiss turned over the jacket which he stated he had been wearing at the demonstration. Some teeth were missing from the left side of the zipper about half way down the jacket and the zipper clasp and tab were in the upper left hand breast pocket. Zeiss claimed that the damage had been done during his encounter with the policeman, although he did not notice the broken zipper until after he got away and crossed the street. He said that he went to the same location on the median after the incident where he found the zipper clasp and tab on the ground.

Daly witnessed the event and reported as follows to the Commission Investigator:

> "I also saw police cars arriving and parking on Donald Street. One policeman, an older man of sturdy build, and a little rotund, with short greying hair, got out of one of these cars on Donald and approached a demonstrator who was doing nothing other than standing on the median. The policeman said something to the man I think, and then the policeman suddenly kneed the man at the end of his spine real hard, and told him something like 'get to the other side of the street' and 'If you need any help, I'll help you across'. The fellow crossed through the traffic."

The two independent observers were Paul James Jamieson and Charles Gordon McDougall, who were standing on the top of Gord's Ski Shop during the event. Jamieson reported as follows to the Commission Investigator:

> "By now a lot more police had arrived and there was a knot of about 100 people still grouped behind and in front of the cruiser with the prisoner which was now almost onto Donald. The fighting between the police and protestors had pretty well

stopped, and the police threw two dark-skinned people into the paddy wagon parked on Donald just north of Bell. They finally got the police car onto Donald Street and two dark-skinned young men came across Donald and jumped in front of the cruiser and knelt down. The cruiser was going south about 15-20 mph and had to slam on the brakes to avoid running over those guys. One big policeman, maybe 6 feet or 6 feet one, but stocky, I'm sure he was either bald or had little hair, at least none showing below his hat, maybe 45-50 years old, grabbed one of those guys, pulled him up onto the boulevard and butted the guy twice in the ribs with the end of his night stick which was the new, black kind with the handle. I don't know for sure if he hits the guy to make him kneel down, but he got the guy into a kneeling position sort of with the guy's face close the car. The police car took off to the south. Then the police officer picked the guy up again, kicked him in the ass real hard, and that sent the guy on his way. The guy ran east across Donald stopping at one point to call the police officer a few names. That was the only incident I saw where I thought the police used excessive force. I really don't think the young fellow deserved to be hit with the night stick in the ribs, or to be kicked as hard as he was."

McDougall reported to the Commission Investigator as follows:

"I was still standing on the outside steps of Gord's Ski Shop or just inside the building by now. A colored ghost car pulled up on the boulevard and parked directly in front of our shop and two uniform policeman got out. Then a black and white P/C was going south just then with one or two people in the rear seat. About four other protestors ran out onto Donald and blocked the progress of the black and white car by linking arms and sitting or kneeling in front of it. The police car stopped abruptly to avoid hitting them. Then one of the police out of the silver car, a large bald-headed policeman, in his 40's, grabbed either two at the same time or one right after the other, and yanked them up onto the boulevard against a fender on the silver car. He then took his baton and jabbed each of them in the abdomen area hard enough to double one of them over. One of the two spun around, away from the policeman and the policeman then kicked the guy in the backside with lots

> of force. He told the guy to go home. The two protestors ran east across Donald Street and stood by the guardrail."

Harry Berbrayer, a demonstrator reported as follows to the Commission Investigator:

> "What I saw was what appeared to be two Chilean men, two men at any rate, walked out onto the street and stepped in front of the car, one of them merely stood there while the other one began to kneel. The impression I got was as though he was practising some passive resistance, perhaps he was going to kneel in a position of prayer or something in order to convey to the police and to the demonstrators the awful disorder of what was going on and was embarrassing people, at any rate he did not remain in that position for very long because almost simultaneous to this happening an unmarked police car had pulled up driving north in the south lane and had parked, as I recall, partly on the boulevard and this was just perhaps 20 feet - 25 feet south of that car in the middle lane which seemed to try to proceed south with whoever was in the car. From then, a policeman jumped out of the police car on the boulevard. He was a tall fellow, perhaps 6 feet, he was rather overweight, large stomach and as I recall it, he was bald, and he seemed to look about him, size up the situation very quickly and decided what he had to do was to take some kind of decisive action to allow the police to once again be in control of the situation. He walked very quickly towards the man who just started to kneel-this was a young man of about 5 ft. 7", who had a broad, rather stocky build, was wearing what looked like a sort of yellow colored leather or imitation leather jacket that was hanging open and had shortish but shaggy dark hair and looked to me to be South American, and grabbed this man basically by the collar and half picking him up and half sort of kicking him along he continued to kick and punch him very rapidly with great efficiency as he pushed him up the street in sort of a diagonal way in the direction of his parked police car. I almost immediately and a few other people next to me started shouting, 'what are you doing - let him go - you don't need to hit him', and other things we were shouting very furiously and very loud and the police officer could hear us although he was trying to pay no

> attention to us but I wonder if perhaps our presence and our shouting didn't cause him to eventually let the man go because he pushed him and kicked him up the street as I say and when they got to the police car he basically spun him around and punched or pushed him some more times and let him take off. I watched this very closely because I was extremely impressed by the rapid sort of rain of blows on this young man. He basically was not fully standing by the time the policeman started to push and kick him up the street, so he was sort of half stumbling along as he was being hit and I was watching closely to see if the policeman was using his stick. While he had his stick and kept it branished above the man's head he seemed to be only using his hands and his feet."

Herman Mauricio Fernandez, a demonstrator reported to the Commission Investigator that as he moved to the north he saw a big policeman kicking a young fellow out on the boulevard. When Fernandez first saw them the young fellow was running south on the boulevard with the policeman chasing him, and the policeman kicked the young man causing him to fall down. As the young fellow got up and started running again the policeman caught him and kicked him again "right in the butt." Then the young fellow got away and ran south on the boulevard and the policeman stopped chasing him. Fernandez did not see the young fellow again, but thinks he got back into the crowd.

Susan Hall, a demonstrator, reported that she saw policemen chasing a man on the boulevard on Donald Street in front of the Consulate, viciously kicking and beating the man with the nightstick until the victim had fallen down. The police officer stopped the assault almost instantly after a horrified onlooker shouted out "police brutality."

Ellen Kruger, a demonstrator, reported as follows to the

Commission Investigator:

> "I saw large and powerful-looking uniformed officers pushing a small Latin American man towards one of the police cars on the boulevard at Donald Street. The officer had the man's arms so forcefully twisted behind his back that the man was bending forward to reduce the pain. The officer was large and obviously had superior physical force over the man. The man was under control and was yelling. I didn't know whether that was yelling in pain, yelling at the officer, yelling at the crowd. I couldn't discern what he was saying. The officer pushed him against the car and then gave him a powerful blow with his club at the shoulder or collarbone level. And that was followed, the man must have turned because it was followed by a very strong jab to the man's stomach or groin again with his club. I felt very shocked and upset and the instantaneous thought that goes through one's mind when I first saw the first blow, I thought I must go over there and tell the officer to stop."

Gabriel Daza reported to the Commission Investigator that he was standing handcuffed on the Donald Street median when cruiser car 1612 backed off Bell onto Donald Street and started south. He reported that he saw Patricio Zeiss, who he used to play football with, cross Donald Street and sit down on the ground in front of the police car. He said that a policeman came off the median. Zeiss intended to get up and try to run. He said that the policeman kicked Zeiss in the behind and Zeiss fell down again and then got up again. Daza saw Zeiss kicked once only and did not see him hit or punch. That is all Daza saw because, he said, there were many people between himself and Zeiss.

Ortiz was seated in the back of cruiser car 1612 as it backed onto Bell, then proceeded south on Donald. In his evidence he stated that he saw two people sit on the ground on Donald Street about fifteen to twenty feet ahead of the police car. He said that the police car did not stop and was proceeding at a speed of between two and five miles per hour. He said that he had a clear view of the two people on the road. He said that the police officers in the front seat of his car must have seen the two people on the road and that a police officer from outside of the car ran to where these two people were seated. Ortiz said that he observed the man, known to him as Zeiss, to be kicked by the police. The police officer who did the kicking was on the boulevard. The police car from which the officer came was on the boulevard facing north. Ortiz was unable to state whether or not it was a marked car. Ortiz said that the police officer grabbed Zeiss and threw him over the car. The police officer grabbed Zeiss with both hands by the jacket. Zeiss hit the side of the police car with his left side. The police officer started kicking Zeiss on the leg. The police officer swung his stick but Ortiz cannot say if Zeiss was hit with the stick. Ortiz said that Zeiss fell to the ground and was kicked again. The police officer was kicking with his right leg. Zeiss was kicked in total more than five times. Zeiss was kicked in the leg. Zeiss was wearing a jacket but Ortiz did not remember the colour. Ortiz said that he talked to Zeiss after October 28th. Zeiss came to him and said that he (Zeiss) was sorry for everything that happened. He said that he said nothing to Zeiss about the incident. He said that neither police officer in the cruiser car commented on the Zeiss incident. He said that he is quite sure that the police officers, Capner and MacCoy, saw the incident.

In cross-examination by Counsel for the City of Winnipeg

Ortiz maintained that two people were sitting in front of the cruiser car. He said that he thinks that the police car slowed down even more.

William Ursel reported to the Commission Investigator as follows:

> "...when my attention was drawn to the median on Donald Street directly opposite me. I had a clear view that way and I saw a person about 20-21 years, maybe 5'2", dark skin with shoulder length hair, handcuffed behind his back standing still on the median. He was facing a policeman who was standing about 2 yards north of him. The young man stepped forward towards the officer with no indication he meant to kick the officer, and instantaneously the policeman thrust the butt end of a black stick or club into the man's stomach area. The young man buckled forward from this blow but didn't retaliate in any way. As he straightened up he began to turn to his right and the policeman kicked him a strong blow to the upper right thigh. He continued to turn and was then kicked forcefully in the lower left back and then twice more in the lower left calf."

Constables Rhyse Ernest Charles Hanson and Danny Hutch arrived at the scene of the United States Consulate at about the time that cruiser car 1612 was backing off Bell onto Donald Street. They arrived in an unmarked car and parked it on the median of Donald Street. Constable Hanson reported as follows to the Commission Investigator:

> "Constable Hanson was on the north side of cruiser car 1612 as it backed off Bell Avenue onto Donald Street and he was making sure that people were clear from the car so the car could back up without hitting anybody, and making sure no one prevented the car from backing up. He was there when the car backed up and started to go south. At that time Constable Hanson saw 2 males go in front of the cruiser car and does not know where they came from. He knows it was a district 6 cruiser car, although he does not remember the number. One male kneeled or sat in the road directly in front of the cruiser car while the other one was standing in front of the car. At this time Constable

> Hanson would have been on the west side of the cruiser car and about 15 to 20 feet away from these 2 gentlemen. Constable Hanson started to go around the cruiser car to try and get those people that were in front. That is when he first saw Constable Hutch again. Constable Hutch stepped out from the boulevard (centre median) and he cannot remember if the guy was sitting or kneeling, but Constable Hutch grabbed him by the scruff of the neck and pulled him up onto the boulevard. The other gentleman at that time went back up onto the boulevard at the same time Constable Hutch was pulling the other one onto the boulevard from in front of the car. That is all he saw of the event because there was a 3 man television crew who ran across the street and stood in front of the cruiser car. He went up to them and told them to get off the street, that they were blocking the way of the cruiser car. He had to tell them 3 or 4 times to get off the street and saw no more of the encounter involving Constable Hutch."

Sergeant Nicholson observed part of the encounter between Hutch and Zeiss. In his viva voce evidence he stated that as cruiser car 1612 headed south on Donald Street a male came running across the boulevard. Constable Hutch grabbed the male by the shoulder and pulled him down on the boulevard. Nicholson stated that he believes that the male was going to run in front of the car. He said that Capner, who was driving cruiser car 1612 was looking at him. Nicholson was in the west lane of the southbound portion of Donald. Nicholson was motioning to Capner to move. Nicholson saw Hutch grab the man by the shoulder while on the median. Nicholson said that he saw cruiser car 1612 come to a complete stop before the man. He said that Hutch used his left hand to grab the man and pulled the man back and down. The man had been running west towards the southbound lane. The man ended up on the boulevard in a more or less prone position. Nicholson's attention was then directed to getting Capner away from the scene.

MacCoy who was seated in the front seat of cruiser car 1612 as it came to a stop in order to avoid hitting Zeiss and the other person who were stationed in front of the cruiser car on Donald Street. She says that she did not see the people, Hutch or the event which took place in front of and to the left of her. She reported to the Commission's Investigator that once the car had backed onto Donald Street it started south. She does not recall anyone standing or kneeling in front of their car forcing them to stop. There might have been someone on the right side of their car but there was no one ever in front of their car at any time on Donald Street. She did not know Hutch but said that now that she knows him she did not see him there.

Capner was equally blind to the event which took place in front of and to the left of him. In his viva voce evidence he said that he intended to go to district 6 police station. He did not remember seeing a demonstrator kneeling down in front of cruiser car 1612, "when we got onto Donald Street there were some demonstrators on Donald but I don't remember the incident. When I started I proceeded slowly because there were demonstrators around. Not until I was in front of the building did I proceed at a normal speed." He did not see Hutch remove a demonstrator from the front of cruiser car 1612.

A review of Exhibit 11C, CKY-TV videotape shows the following:

"02:37:09 The CKY camera pans from the Willows incident to the southeast and east to show cruiser car 1612 reversing onto Donald. As 1612 stops on Donald and before it starts south, Patricio Zeiss is seen to leave the eastern perimeter of the crowd behind cruiser car 1662, and walk to the south ahead and to the west side of cruiser 1612.

02:40:02 There is a break in the sequence and when filming resumes cruiser car 1612 is slowly moving south on Donald Street with Paula Fletcher and a policeman following along on the right side. A policeman (probably Cst. Hutch) can be seen standing on the boulevard south of cruiser car 1612.

02:42:00 Zeiss can be seen moving directly into the path of cruiser car 1612 which is now moving south, and begins to sit or kneel down. Brian Daly can be seen overtop or directly past Zeiss, and he is probably standing on the median where he is seen very shortly after. Paula Fletcher is in the foreground at this point and a policeman is gently holding her away from cruiser car 1612.

02:43:27 A policeman (probably Cst. Hutch) is seen in the median area and moving apparently to the front of cruiser car 1612.

02:44:17 Cruiser car 1612 stops.

02:45:29 Cruiser 1612 starts slowly south again.

02:47:24
to 50:21 Cst. Hutch is seen with Zeiss in his grasp as Zeiss is moved back against a marked police car parked on the median. Another police officer is a little south of Cst. Hutch looking at Brian Daly who is a very few feet south on the boulevard. Cruiser car 1612 is then seen to continue south."

Photograph 132 of Exhibit 12 appears to show the arrival of Hutch and Hanson as they leave their unmarked police car parked in a northerly direction on the median of Donald Street. It is possible that Zeiss is the person partially seen in front of the unknown photographer with the packsack in the same photo.

In answer to all of this evidence, from witness from the media, demonstrators, police department, and independent observers, Hutch gives the following explanation:

> "On October 28th, 1983 Constable Danny Hutch was working in company with Constable Rhyse Hanson in cruiser car 1122, grey in colour, and arrived in front of the U.S. Consulate sometime between 5 and 6 p.m. in response to a radio message for

assistance. They parked on the centre median of Donald Street pointing north. Shortly after their arrival Constable Hutch was standing on the centre median when a car which he did not immediately realize was a cruiser car, started accelerating south on Donald Street. Two gentlemen approached this car when it was just kitty-corner across from where Constable Hutch's car was parked, in a great hurry. They ran up there and one fellow just kneeled in front of the car in a praying position saying something that sounded like 'Santa Maria' or 'Jesus Christo' or something along those lines. Those are the only 4 words that Constable Hutch could make out. The other person stood 5 to 8 feet behind the first fellow to the south, gesturing and moving his hands and yelling and hollering. Constable Hutch did not pay too much attention to their dress but thought both were dressed in green khaki garb or something. The one who stood to the south was dark haired and dark complexioned, in his late teens or early twenties, normal haircut, neat. The one kneeling was 5 foot, 6 inches to 5 foot, 8 inches, maybe 150 pounds, 19 to 22 years of age. He could be a South American or Latino. The car had to stop because of these 2 gentlemen. Constable Hutch walked over and told the fellow who was kneeling in front of the cruiser car to get off the street and that sort of thing and reached over and pulled him up. He tried to pull him up by one hand and could not do it so he used both hands, then turned around and took him over to the boulevard up against his cruiser car which was only 5 or 6 feet from where the fellow had knelt. This fellow resisted Constable Hutch and screamed and hollered at him. He did not talk to Constable Hutch in English but what Constable Hutch thought to be possibly Spanish or Portuguese. Constable Hutch pushed him up against the car to get him out of the way of traffic because he thought traffic was going to keep on coming by and the fellow was going to go back on the street and he did not want that. He told the fellow to get up the street or he was going to get hurt. Constable Hutch had his issue tonfa stick or defender baton in his right hand in the short position (with the short end out) but shortly after this, put his baton down on the street because he did not want to use it in this kind of situation. That was the only time Constable Hutch physically handled this gentleman was when he pushed him towards the car. Constable Hutch recalls while the first gentleman was against the car the second one who was standing behind turned and came at a high rate yelling either at the first gentleman or himself. That is when the first guy threw his hands into a boxing stance and came off the car towards Constable Hutch who decided if there is going to be a fight there is two of them so he had better watch himself and also consider a number of other things in the potential riot situation. Constable Hutch did not feel he could afford to have a great crowd attracted there so he had to get rid of the young fellow or drag him off the paddy wagon. That is the point at which he put his baton down on the street. The second gentleman was talking in either Spanish or Portuguese and Constable Hutch really did not know what they were talking about so he did not know what to expect. The other gentleman was 2 or 3 feet behind the first one, on the east side of the cruiser car. As the gentlemen in the boxing stance stepped towards Constable Hutch, Constable Hutch moved towards him quickly although he had not decided what to do. He wanted to be closer if there was going to be a confrontation. Constable Hutch was also worried about the gentleman behind him, and decided to do a little bluffing. He went into a sort of martial arts stance and feinted a couple of times with his left foot and then with his right foot, throwing his hand up in the air and changing things so the guy behind stopped and the first guy looks at Constable Hutch, looks back, then looked at Constable Hutch again. Constable Hutch is closer now and thinks he can either kick or hit him, so he got his foot up in the air and said 'now get the fuck out of there, you're going to get hurt'. Constable Hutch feels he knows this gentleman from seeing him a number of times in European Health Spas, but does not know his name. Constable Hutch was within 3 feet of the first gentleman and could have kicked him if he chose to but at no time did his foot come in contact with that person. The second gentleman remained 5 or 6 feet away. Apparently Constable Hutch's bluff through his foot actions worked because both gentlemen left and went southeast behind the ski shop. The only time they spoke any English was when departing and one said 'why me?' or 'why I can't be here?' - something to that effect. Constable Hutch estimates he feinted with his feet 5 or 8 times. He did not use his baton during this encounter and put the baton down in the street when he realized there might

> be a fight. Constable Hutch says he weighs 250 pounds, is 5 feet, 11 inches, and always wears his hair pretty well shaved on the sides."

THE ARRESTS WHICH TOOK PLACE AT DISTRICT 6 POLICE STATION

Another incident of interest to this Commission concerned the circumstances in which Walter Roy Kirby and Paula Fletcher were arrested at District 6 police station after the completion of events at the United States Consulate. Kirby walked into the police station with Fletcher and both were arrested. Like Fletcher Kirby was charged with obstruct a police officer and cause a disturbance. The only witness in the police department who is able to speak to the matter of the laying of the charge or the circumstances leading to the charge being laid against Kirby is Sergeant Nicholson. Several police officers gave evidence about Fletcher's conduct and we need not repeat the evidence here.

After leaving the United States Consulate Nicholson went to District 6, entering the back door. He said that Kirby and Fletcher came through the front door and Fletcher was demanding to use a telephone. He said that he recalled that Kirby had been shouting and hollering at the demonstration. He had seen Kirby in the crowd. Kirby had been at cruiser car 1612. Nicholson felt that there was going to be more trouble. He invited Fletcher and Kirby into the back to use the phone. Fletcher said "Am I under arrest?" He said that his hand had been called. He said "yes." Both were charged with obstructing a police officer and causing a disturbance. Nicholson was of the view then and remains of the view now that it was appropriate that Kirby charged with these charges. He gave evidence that he felt that he saw Kirby when Fletcher first spoke to him. Further, Kirby was not tar from her during the rest of the events. Kirby was shouting and hollering "let him go." He was unable to state how many times Kirby shouted that. Nicholson believes that Kirby being part of the crowd that circled the car and having obstructed each officer that was there, it was appropriate to charge him. He also said that Kirby went to the rear of the cruiser car 1612 when Fletcher gave directions to people to get behind the car. Kirby moved toward the rear of 1612 at that point. Nicholson said that he did not see Kirby stand or sit behind 1612. He lost sight of Kirby. Kirby actually walked in behind 1612. He was about 6 to 7 feet behind 1612. Nicholson found out Kirby's name at District 6. If Kirby had not come to District 6, he would not likely have been charged.

In cross-examination by David Deutscher Nicholson maintained that he saw Kirby move behind cruiser car 1612. Nicholson said that Kirby did nothing more than 150 or 200 other people did. He had a concern that Fletcher and Kirby would cause trouble at District 6. He denied Mr. Deutscher's suggestion that Kirby had been arrested solely because he was with Fletcher.

Fletcher gave viva voce evidence as to the circumstances of the arrest. There are differences between her account and that of Nicholson, but the differences do not appear to be important.

Kirby's account of his activities at or near the United States Consulate on October 28th is summarized in Exhibit 34. The Commission Investigator's summary of the interview is as follows:

"Kirby was standing well south of the U.S. Consulate steps on the grass area east of the building when the speeches were about to start. He was thinking of waiting when he saw a policeman bringing a demonstrator south along the Consulate Building and some pushing and shoving occurred. He was not personally involved and does not know what the altercation was all about.

He was still in that same position and about to leave again when he saw some police and demonstrators moving to the north towards Bell Avenue. He decided to go around the back (or west side) of the Consulate because of the people in front, and took up a position either on or just south of the sidewalk on the north side of the Consulate. He remained in that position for five or ten minutes and judges his distance from the police car that Ortiz was eventually placed into, as 20 feet. He saw Ortiz put into the car by Cst. Rand. He also saw two or three people throwing leaves and grass towards the police car but does not know who they were.

He was in that same position when demonstrators started sitting at the front and rear of the police car, and he didn't think that was a particularly good idea. The police tried to remove people from behind the car,and Kirby slowly started making his way to the east along the sidewalk. He is a little uncertain about the sequence of events but thinks it was about the time he arrived on the sidewalk at the southeast corner of Donald and Bell Avenue when the car containing Ortiz backed onto Donald Street and left the area. He had seen some interaction between the police and demonstrators but nothing specific because he was well back in the crowd still on the south side of Bell Avenue.

Kirby didn't know that many people at the demonstration and still really didn't know what was going on. He recognized a person from university across the street whose name he does not know, so he crossed the street to talk with him. As he did that, he saw the same police officer who had put Ortiz in the car chasing a person on Donald Street very near a passing bus. He has no other specific recollection of events in that area. It was shortly after this that events wound down and he left for home.

Kirby denies joining in any of the chanting going on at the demonstration. He never talked to any police officers while there. He may have said hello to Paula Fletcher and Paul Graham earlier on in the demonstration since he knows both of them, but was never physically near them during the subsequent events. He was never in physical contact with any peace officer.

Kirby left for home by bus and as *it happens*, his bus stop is right in front of District 6 police station. On arrival there, there were a number of people of Spanish American ethnicity gathered in front of the station so he decided to walk across the street and find out what was happening. As he crossed the street, he saw Jack Fryatt drive into the parking lot of District 6, accompanied by Paula Fletcher. Fryatt was driving an older red Rambler car. Paula Fletcher got out of the car and Fryatt went to park it. Kirby walked with Fletcher to the entrance of the police station and she told him she believed one or more of the demonstrators who had been arrested were inside. She asked Kirby to accompany her since they were the only Canadian people at District 6 at the time. Fletcher expressed a concern that she did not want other Chilean people to get involved in contacting the police. Kirby considered that a reasonable request and agreed to accompany her. Just as they entered, two police officers came in behind them, one of whom Kirby recognized as Sgt. Nicholson. Fletcher asked these policemen if there was anybody being held there and it is Kirby's recollection that Sgt. Nicholson replied in the affirmative. Fletcher then asked if she could use the telephone. Sgt. Nicholson replied she could but she would have to use the telephone in the back of the police station. She asked why and Nicholson replied the telephone in the front didn't work. Fletcher said something like - well, I really don't think it's a good idea for me to go back there. Nicholson said something like, 'Well if you want to see the person that we're holding, if you want to see Gundher, you have to come into the back to use the telephone.' Fletcher sort of looked at Kirby and he thinks they both sort of knew what was happening but went into the back in any event. Once in the back, Sgt. Nicholson turned around and told both Fletcher and Kirby they were under arrest. Up to that point in time, Kirby had said absolutely nothing. Kirby asked, 'Am I under arrest as well?' and Nicholson replied, 'Yes, you are.' Kirby and Fletcher were then asked to sit at separate desks in the back

> and two other police officers were assigned to take statements and particulars. They were both allowed to use the telephone and Kirby phoned his parents. They were both given the Charter of Rights and advised they could have access to a lawyer. Kirby chose not to make a statement and agrees his response was as contained in the police report - 'As far as I'm concerned, I wasn't obstructing, I was just standing on the curb.' Kirby remained at the desk for approximately an hour or two before eventually being released with a notice to appear on the following Monday. Paula Fletcher was released a few minutes later. Kirby's parents were waiting for him in the lobby and they immediately went home.
>
> Kirby says he was shocked at his arrest since he felt like an innocent bystander. His personal feeling is that Paula Fletcher was arrested because she's a member or the leader of the Communist Party and he was arrested because he was with Paula Fletcher. He does not think the police officer that arrested him recognized him from the demonstration. He also theorizes that the police thought he was a member of the Communist Party, which he is not."

Kirby can be seen in photos 31 to 43, 62 to 68, 74, 92 to 95, 99, 133 to 135 of Exhibit 12. He is also seen in photographs 20 to 32 of Exhibit 21 and sporadically in the videotape. As shown in these photographs and videotape he is usually well back in the crowd and not taking part in the chanting or physical interaction between demonstrators and the police. The nearest one can seen Kirby to any policeman is in photos 28 and 29 of Exhibit 21, where he is standing relatively close to Nicholson and an unidentified constable at the rear of 1612 and almost directly in line with the west curb of Donald Street.

SCHEDULE "F"